

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

CLAIM NO: SVGHCV2010/0303

BETWEEN:

ANDY BUTE

Claimant

AND

[1] GARY "TRUBBIE" DE FREITAS
[2] MICHAEL EMMONS

Defendants

Appearances:

Ms. Suzanne Commission of Counsel for the Claimant
Maia Eustace of Counsel for the Defendant

2012: June 21
2012: August 8

JUDGMENT

MASTER V. GEORGIS TAYLOR-ALEXANDER

Background facts

- [1] On the 8th day of March 2010, the claimant, at the time a 46 year-old man, was driving his motor cycle PB469 from Georgetown to Magnum in Saint Vincent when the second defendant, who was driving a rented motor vehicle registration number RD662, owned by the first-named defendant so negligently drove his motor vehicle that he caused it to collide with the motor cycle of the claimant and striking the right leg of the claimant.
- [2] As a result of the collision the claimant was thrown to the ground and both his motor cycle and his leg were injured.

[3] The proceedings were at an earlier stage discontinued as against the first defendant, and judgment in default of defence was entered against the second defendant.

[4] I am now required, based on the default judgment and an application and submissions of the claimant, to assess the quantum of damages payable by the second defendant for the injury loss and damage suffered by the claimant.

Quantum of Damages

[5] I had previously advised counsel for the claimant that having reviewed the claim for special damages and reimbursable loss of \$11,648.91, I found the same to have been made out.

[6] Having fully reviewed the evidence submitted I find the claimant to have proven sums of \$3,648.90 with respect to loss other than loss of earnings.

[7] The claim regarding loss of earnings is curiously weak, given that the regularity of the claimant's employment should have made such evidence readily accessible and he ought not to have had any difficulty in proving the same. The salary slips exhibited are hardly sufficient for the court to form a conclusive position as to the claimant's average monthly earnings. Based on the limited evidence provided, I concluded that the average monthly earning of the claimant was \$1,400.00.

[8] I am satisfied that the injuries suffered by the claimant affected his ability to work and his employment earnings. Based on the evidence of the medical practitioner I find that the claimant was unable to work for a period of eleven months immediately following the injury and award loss of earnings totalling \$15,400.00.

[9] I therefore award special damages of \$19048.90 being the sum of \$15,400.00 and \$3,648.90.

General Damages

- [10] In assessing general damages our court has approved the seminal authority of the Court of Appeal of Trinidad and Tobago Court of Cornilliac v St. Louis¹ and accepted the factors stated by Wooding CJ which are to be taken into account in assessing general damages. Those factors are (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities; and (v) the impact on the claimant's pecuniary prospects.
- [11] I have considered the pleadings and all of the medical and other evidence which came from the reports and the oral and written evidence. In applying the factors identified by Wooding CJ, I have particularly considered the medical reports of Dr. Woods, the attending physician. I am satisfied that the defendant sustained a comminuted fracture of his right tibia and fibula, for which he was treated with open reduction and fixation of the tibia. He was discharged after surgery without problems on the 29th March 2010 but was readmitted when infection set in and x-rays showed some loosening of the plate and instability of the fracture site due to infection and excessive weight bearing on the affected area. He was treated with antibiotics and casting of the leg. The fracture consolidated but with some deformity due to the plate loosening during the healing of the tibia with the resultant shortening of the leg. He is now ambulant but sometimes uses a walking aid for support. He will have a permanent limp.
- [12] I have reviewed the following authorities:-
- (a) Sherma Mathurin and Rain Forest Sky Rides SLUHCV2008/0551 where the claimant was awarded \$150,000.00 for pain and suffering and loss of amenities. She suffered a displaced untr-articular open fracture of the low end of the right tibia, with a fracture of the fibula. She required immediate surgery

¹ [1965]7 WIR 491

which required the restoring of the joint alignment and the internal fixation of plates and screws along with bone grafting of the fracture. Post injury she cannot take long walks or run or place any pressure on her ankle. Love making is frustrating as she is limited to a single position and she can no longer play with her children.

- (b) **Ronald Fraser v Joe Dalrimple ANUHCV2004/0513.** The claimant, a truck driver, married man and father of four children, fell from a moving truck, hitting the pavement with his left foot first. He suffered a severely comminuted fracture of left ankle and lower 1/3 of leg; fracture of the left medial malleolus of left tibia; severely comminuted fracture of lower end fibula; lateral dislocation of left ankle/tibio talar dislocation with lateral shift of talus with ankle diastases; severely contaminated compound wound with neuro-vascular compromise. He was hospitalized for several weeks. The injury was very severe and he was not able to walk for several months. Several pins were placed in his leg to try to assist in mending the ankle and leg. He remained bedridden for five months, after which he began to move around his home and his yard with the aid of a crutch. He has had to undergo physiotherapy. He needed to have further surgery on his ankle as it was not healing; the ankle joint had to be fused. He was in constant pain and could not walk without assistance. He was unable to work since the accident and has not been able to participate with his wife and children in various family activities which he had previously enjoyed. He has full disability of the lower left extremity. His doctors indicated that even if surgery is successful there is significant risk that he will develop osteo-arthritis in the ankle joint. He is required to take pain relievers daily to alleviate the pain and discomfort. He was in 2010 awarded the following:- general damages for pain and suffering in the sum of \$85,000; general damages for loss of amenities in the sum of \$65,000; general damages for future medical expenses in the sum of \$10,000, general damages for loss of future earnings in the sum of \$102,960.

(c) Ronald Woods vs. Irvin Joseph SVG 506/2005. The claimant suffered multiple small lacerations to the face and left elbow and his leg was fractured in two places which was surgically repaired. He was hospitalized for nine days and walks with a limp. The doctor expected the claimant to have some permanent mild to moderate disability of his left leg. Award for pain and suffering: \$40,000.00.

[13] I have considered the above authorities insofar as they are comparable and have accounted for the difference in circumstances where they are not. I have considered the physical injury sustained and the pain and suffering endured by the claimant and award the sum of \$75,000.00 in general damages.

Future loss of earnings

[14] As regards the assessment of general damages in respect of future loss of earnings, there are a number of uncertainties with this award which include such matters as the employability of the claimant, the work that he had undertaken prior to the injury and his permanent disability following the injury.

[15] The general approach to computation for loss of future earnings is to use the multiplier/multiplicand method.

The multiplicand

[16] To reach a figure for the award of a lump sum, the normal method of assessment which is used by the courts is first to calculate, as accurately as possible, the net annual loss suffered, which is usually based on an average of the claimant's pre-accident "take-home" pay. This is to be used as the multiplicand.

[17] I am conscious of the principles enunciated in Cookson v Knowles² that for the purpose of arriving at the multiplicand, the basis should be the least amount that the claimant would have been earning if he had continued working without being

² (1979) AC 556

injured. I had earlier concluded that the defendant earned an average of \$1,400.00 per month, for an annual multiplicand of \$16,800.00

The Multiplier

[18] The claimant's counsel has suggested a multiplier of 15 years given a normal working life of 65. I am satisfied that the claimant is not wholly incapacitated and though he is partially disabled the report of Dr. Woods suggest that he is not unemployable. I would fix a multiplier of 7.

[19] Using a multiplier of 7 and a multiplicand of \$16,800.00 the award under this head is \$134,400.00.

Interest

[20] Pre judgment interest: on special damages at the rate of 3% from the date of the accident to the date of judgment; on general damages for pain suffering and loss of amenities at the rate of 4% from the date of service of the claim form to the date of judgment.

[21] Post judgment interest: On special and general damages at the rate of 6% per annum from the date of judgment to the date of payment in full.

Summary and Order

[20] The total damages which I award to the Claimant for his personal injuries, loss and damage consequent upon the accident is as follows: Special damages \$19,048.90; Pain and suffering and loss of amenities \$ 75,000.00; Future loss of earnings \$134,400.00. I further award the claimant prescribed costs on the sum of \$94,048.90 at the rate of \$8,464.20.

V. Georgis Taylor-Alexander
High Court Master