

THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2001/0047

BETWEEN:

[1] IAN SPENCER

Claimant

and

[1] RONALD GREAVES
[2] SEVERN WILLIAMS

Defendants

Appearances:

Mr. Moet Malcolm for the Claimant

Ms. Patricia Marks for the 1st Defendant

Mr. Stephen Huggins for the 2nd Defendant

2012: October 1
October 10

JUDGMENT

[1] **THOM, J:** On the morning of 24th March 2000 while the Claimant Mr. Ian Spencer was riding a bicycle along Bay Street he was struck down when Ms. Severn Williams the 2nd defendant who was a passenger in a mini-bus driven by the 1st defendant Mr. Ronald Greaves opened the front door of the mini-bus. At that time the mini-bus had stopped by the traffic light in the vicinity of the Y De Lima store on Bay Street. Mr. Ian Spencer was injured as a result of the accident. He instituted this claim in which he claims special and general damages and costs against the defendants.



- [2] In his claim Mr. Spencer alleges that the defendants were negligent in that Mr. Ronald Greaves stopped at a place other than a bus stop to allow passengers to exit the bus, and Ms. Severn Williams did not take due care and attention in opening the door of the mini-van.
- [3] Mr. Greaves in his defence alleged that the accident was as a result of the negligence of Mr. Spencer in that he tried to overtake a parked vehicle being the mini-bus on the left side. Mr. Greaves also contended that he did not give permission or instruct Ms. Williams to open the door of the vehicle.
- [4] At the trial both of the defendants were absent. No witnesses testified on their behalf. Mr. Spencer testified and was cross-examined by both defence counsel. He called no witnesses.
- [5] The evidence of Mr. Spencer is that on the morning of 24th March 2000 he was riding his bicycle along Bay Street. As he approached the traffic light by the Y De Lima store a mini-bus driven by Mr. Greaves passed him at that time the traffic light was signaling green but Mr. Greaves stopped at the traffic light and Ms. Williams opened the front passenger door. In doing so the door struck him on his shoulder and he was knocked off his bicycle. He suffered injuries as a result. He went to the Kingstown General Hospital where he was examined by Dr. Sunil Prasado Rao. A medical report from Dr. Rao was exhibited which showed that Mr. Spencer suffered abrasion to the right knee, contusion and abrasion to the right clavicular region and an undisplaced fracture of the middle, one third of the right clavicle. His arm was placed in a sling.
- [6] Mr. Spencer further testified that he is a fisherman and he repairs bicycles. He was unable to work from 24th March 2000 until 8th May 2000. His earning was \$600.00 per week. The cost of the x-ray was \$10.00 and the cost of medication was \$48.00. Receipts were exhibited by Mr. Spencer.

- [7] Under cross-examination by Ms. Marks Mr. Spencer testified that he was riding on the left hand side of the road in the drain when he was struck by the door. There were no vehicles in front of the van. He denied the traffic light was signaling red.
- [8] Under cross-examination by Mr. Huggins Mr. Spencer testified that other passenger vans had stopped at the bus stop in front of the Police Station. He denied the traffic light was signaling red and he rode past a number of vehicles on the left hand side of the road.
- [9] As the end of the trial the court heard oral submissions on liability from all counsel. Written submissions were made in relation to general damages by learned counsel for Mr. Spencer and Ms. Williams pursuant to the order of the court made at the end of the trial. No written submissions were received on behalf of Mr. Greaves.
- [10] Having seen and heard Mr. Spencer and having considered the submissions of Learned Counsel on both sides, I believe the testimony of Mr. Spencer that he was riding on the sloping drain when the mini-bus stopped and Ms. Williams who was at that time worked at the Financial Complex which is obliquely opposite the traffic light suddenly opened the door and the door struck him. Mr. Spencer's testimony was to some extent at variance with his pleaded case. I note this claim was filed on the 9th February 2001, it was instituted by Writ signed by counsel in accordance with the Old Rules. I note also that Mr. Spencer's witness statement was filed since 22nd April 2002. During his testimony more than ten years later, Mr. Spencer with clarity explained how the accident occurred. His testimony under cross-examination was not inconsistent with his witness statement.
- [11] I find that Mr. Spencer has proved on a balance of probabilities that the accident was due wholly to the negligence of the defendants. I find that the defendants are equally liable.

DAMAGES

Special Damages

- [12] Mr. Spencer claimed the following special damages:
- (a) Loss of earnings from 24th March 2000 to 8th May 2000 at the rate of \$600.00 per week being a total of \$3,600.00.
 - (b) Cost of x-ray \$10.00.
 - (c) Cost of medication \$48.00.
- [13] It is settled law that special damages must be specifically particularized and proved. I accept the testimony of Mr. Spencer that while his arm was in a sling he was unable to pursue his trade as a fisherman or repair bicycles. Receipts for the x-ray and medication were exhibited. There was no evidence which contradicted Mr. Spencer's testimony. He was not cross-examined on this aspect of his testimony. I will therefore award Mr. Spencer the special damages claimed being \$3,658.00

General Damages

- [14] Learned Counsel Mr. Moet Malcolm submitted that a sum of \$30,000.000 should be awarded to Mr. Spencer for pain and suffering and loss of amenity. Learned counsel also submitted that interest should be awarded on the sum from the date of service of the Claim Form at the rate of 5% per annum and interest on the special damages from the date of the accident at the rate of 2.5%.
- [15] Learned counsel referred the court to the cases of **Tortola Yacht Services v Denroy Baptiste** [2008]/016 BVI HCVAP; and **CCAA Limited v Julius Jeffers** SVG CIVAPP. No 10 of 2003.

[16] Learned Counsel Mr. Stephen Huggins submitted that where the injury suffered is a simple undisplaced fracture of a bone the sum awarded for general damages range from \$7,000.00 to \$10,000.00. Learned Counsel referred the court to the case of **McPherson Barber v Meyana Samuel** [2009/01] DOM HCV where the trial judge awarded the sum of \$10,000 for pain and suffering to the claimant who had suffered an undisplaced fracture of the ankle as a result of a motor vehicle accident. The ankle was encased in Plaster of Paris for six (6) weeks.

[17] The principle outlined in **Corniliac v St. Louis** 7WIR p491 has been accepted and applied in our courts in assessing general damages. The factors to be considered 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.

[18] The injury suffered by Mr. Spencer is outlined in Dr. Rao's medical report as follows:

- contusion and abrasion to the right clavicular region;
- Abrasion to the right knee.
- An x-ray of the right shoulder revealed an undisplaced fracture of the middle one third of the right clavicle.

He was later discharged from the unit with a sling to the right arm and analgesics and was given an appointment to follow up at the Orthopedic Clinic"

[19] The injury suffered by Mr. Spencer was not a serious injury. Mr. Spencer was discharged from the hospital the same day. There is no evidence that Mr. Spencer needed any follow up treatment. There is no evidence that Mr. Spencer received any treatment at the Orthopedic Clinic. Indeed there is no evidence that Mr. Spencer ever attended the Orthopedic Clinic. There is no evidence of Mr. Spencer

suffering any resulting physical disability. I agree that Mr. Spencer would have suffered pain and discomfort as a result of the fracture and his arm being in a sling. There is no evidence of loss of amenities. Also there is no evidence that the injury has had any impact on Mr. Spencer's pecuniary prospects, his ability to continue with his trade as a fisherman and repair of bicycles.

[20] Mr. Spencer's case can be distinguished from the **Tortola Yacht Services Limited and The CCAA Limited** case referred to by learned counsel Mr. Malcolm. In the former case the court found that the claimant was seriously injured. He had suffered a great deal of pain and discomfort. At the time of the trial he was still experiencing chronic pain in his shoulder, neck and back. In the latter case the claimant's thumb was amputated and several fingers were damaged.

[21] Having regard to the circumstances of this case I will award a sum of \$10,000.00 for pain and suffering.

Interest

[22] The first time interest was mentioned in this case, was in the submission of Mr. Malcolm. Pursuant to the Judgment Act interest is payable on the sum awarded from the date of judgment.

[23] In conclusion I find that the Defendants are equally liable. I award Mr. Spencer special damages in the sum of \$3,658.00 and general damages in the sum of \$10,000.00 with interest at the rate of 5% per annum from the date of judgment. Mr. Spencer is also entitled to costs.

[24] It is ordered as follows:

- (1) Judgment is granted to the Claimant.
- (2) The Defendants shall each pay the claimant 50% of the damages and costs awarded.

- (3) The defendants shall pay the claimant special damages in the sum of \$3,658.00 and general damages in the sum of \$10,000.00 being a total of \$13,658.00.
- (4) The defendants shall pay the claimant interests on the said sum of \$13,658.00 from the date of judgment at the rate of 5% per annum until the sum is paid in full.
- (5) The defendants shall pay the claimant prescribed costs.

A handwritten signature in black ink, appearing to read 'Gefel Thom', is written over a horizontal dotted line.

Gefel Thom

High Court Judge