

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2005/0176

BETWEEN:

FRANCIS MAURICE

Claimant/Respondent

and

(1) CLARENCE MANGAL

(2) NIER SAMUEL

(3) RUTH DUBOIS

(4) EVIS NAITRAM

(5) JOHN ALEXANDER

Defendants/Applicants

Appearances:

Alvin St. Clair for the Claimant

Mark Maragh for the Defendant

2011 May 4

2013 February 7

JUDGEMENT

- [1] BELLE.J: Is the Claimant entitled to an award of \$805,404.25 in damages and costs of \$59,562.00?
- [2] On 20th January 2009 the Claimant filed an affidavit in support of his Claim for Assessment of Damages in the sum stated above. In that affidavit he stated that his age was 41 years.
- [3] The Claimant said that he suffered an injury in the accident which is described as a commuted fracture of the left patella and late patella osteo arthritis. He refers to the medical report of orthopedic Surgeon Richardson St. Rose, F.R.C.S.

- [4] The Claimant stated that based on the said report his injury is a temporary partial disability of 60% and a permanent disability of 20% which he will continue to suffer with for the rest of his life.
- [5] As a result of his injury the Claimant is unable to play cricket and unable to umpire cricket which he used to do because it would become a task to umpire since his injury makes it extremely painful to stand for long periods.
- [6] The Claimant said that prior to the accident he earned a living from farming, building construction, architectural drawings for building construction and also from umpiring cricket. For a period of three years the Claimant was unable to earn a living from these disciplines. However he had returned to umpiring and his construction work is slowly coming back. But his farm had gone to ruin.
- [7] The Claimant assessed his losses as follows:
1. At the rate of \$5000.00 per month from the farming over a three year period he lost \$180,000.00. He presented documentation to support this claim.
 2. In the area of architectural drawings he lost \$288,000.00 in profits over the three year period, or \$8,000.00 per month. The Claimant presented documents to support this claim in the form of letters from former clients, written and signed contracts and copies of cheques.
 3. As far as the umpiring was concerned he lost \$3,500.00 per annum over a period of three years which comes to a total of \$10,500.00. Again the Claimant exhibited documentary evidence in support of this claim.
 4. The Claimant claimed that he had to pay for medical attention both in Saint Lucia and in Martinique. He claimed that this was the recommendation of his doctors in Saint Lucia. The treatment went on for a period of 3 years. He claimed that he also paid cost for traveling involved. The expense for the medical treatment totaled EC\$190,825.00.

- [8] Francis Maurice gave evidence to support the affidavit and application filed in support of the application for assessment of damages under all of the heads above. While the account of the injury suffered and the general damages are accepted in principle many questions are raised about Mr. Maurice's alleged treatment in Martinique and indeed the costs of the treatment overall.
- [9] In addition to the questions raised in the evidence of Mr. Claudius Francis under cross examination a number of issues arose which raised doubts about Mr. Maurice's evidence. Firstly Mr. Maurice agreed that the loss of earning total figure of \$597,825.00 did not add up. Indeed he agreed that the figure should be \$597,325.00.
- [10] Mr. Maurice also conceded that he did not produce a report on his medical treatment in Martinique. He said that he never spent four months in Martinique which contradicts bills attached to his affidavit of January 20, 2009 in the name of Murial Samson.
- [11] Mr. Maurice also conceded that he did not mention seeking medical treatment in Martinique in his statement of claim. Mr. Maurice claimed that he paid a lady in Martinique named Murial Samson for assisting him. He produces receipts but no statement from Murial Samson. He insisted that transportation costs were \$185,000.00.
- [12] Mr. Maurice said that he attended Dr. Jeffers at Tapion Hospital for a second opinion but he produced no medical report from Dr. Jeffers.
- [13] In relation to his farming earnings Mr. Maurice said that he earned \$7500.00 which was paid to him by the Banana Association. This was a gross figure and there would have been a deduction from the money taken for fertilizer. Mr. Maurice had no income for months in relation to farming or construction.
- [14] Mr. Maurice also conceded that his statement of claim did not say anything about the nursing care which he now claims. Mr. Maurice claimed that in support of his

claims in this area he produced contracts in relation to the nursing care. But the contract cannot establish need for nursing care.

- [15] In an affidavit filed on 17th March 2009 Mr. Claudius Francis Insurance Loss Adjuster and one of the principals of Francis, Rosemin & Co. Loss Adjusters, stated that he had investigated the Claimant's account of losses related to the costs of medical treatment said the following in relation to the alleged treatment obtained by Mr. Maurice in Martinique.

"I consulted with the St. Lucia Consul General to Martinique Mr. Kents Compton, to render assistance in locating and identifying the premises at which the Claimant alleged he resided and the person whom he alleged provided transportation services to him in Martinique."

I discovered that:

- (1) The address at which the Claimant alleged he resided and in respect of which he paid rent for his accommodation there, to wit 49 Rue Levassor 97250 St. Pierre, Martinique, is an abandoned, dilapidated ruin. In proof of that I exhibit herewith 7 photos in a bundle marked "CF1" showing photos of the street address, the street where the residence is located and of the residence which lays in ruins.*
- (2) All efforts to identify the individual who allegedly resided at the address over the period 2002-2004 when the Claimant alleges he stayed there, proved futile. Moreover, the person does not appear on the voters list of the address in Martinique, for the period. A certified copy of the voter's list for the year 2003-2004 is being pursued. The police chief of the district also has no knowledge of the individual.*

- [16] Mr. Francis went on to challenge the rental costs for the periods which Mr. Maurice claimed to have paid when he visited Martinique for medical treatment. He was of the view that the cost of rental was out of all proportion to what would have been a reasonable rental accommodation in the area identified. He proposed a more reasonable rental of EC\$115.00 daily.

- [17] Mr. Francis assessed the cost of transportation from the premises where Mr. Maurice claimed to have stayed to La Maynard Hospital where he claimed to have been treated. He concluded that a more reasonable figure would have been

EC\$117.00. He also indicated that public transportation was available and would have been EC\$72.00.

[18] Mr. Francis' findings led to the conclusion that apart from the Claimant's duty to mitigate and not incur such a disproportionate cost for accommodation and transportation while in Martinique as alleged, in the sum of \$140,560.00, compared to the cost of the medical expenses in Martinique, in the sum of \$4,379.19, it would appear that the Claimant is attempting to perpetrate a fraud upon the Defendants and their insurers and upon the Court.

[19] On this score Mr. Maurice argued in an affidavit in reply dated 1st February 2011 that the allegations made by Mr. Francis were based on hearsay and should be struck out because Mr. Francis had alleged fraud and must prove fraud at a standard equivalent to that of the criminal standard.

[20] While the allegation of fraud may be difficult to prove, it is also true that even in civil matters he who alleges must prove. The fact is that the Claimant has not succeeded in persuading me that the cost allegedly incurred in Martinique was in fact incurred or that it was necessary to spend the amount of time alleged residing in Martinique for the purpose of therapy. The receipts do not set me at ease in relation to these doubts. For example Mr. Maurice presents receipts from Murial Samson in Martinique for rental of a furnished apartment on that island along with meals and other services for a period of four months in each instance. But under cross examination he admits that he never spent four months in Martinique.

[21] However it is true that Mr. Francis did rely on hearsay evidence. The court cannot rely on hearsay evidence.

[22] The question that arises is what conclusion should I come to on the issue of the sums incurred in Martinique. I am satisfied that Mr. Maurice was not referred to any specific doctor in Martinique for medical treatment. There is no medical report from the doctor who Mr. Maurice mentioned. I therefore conclude that Mr. Maurice may have visited a doctor in Martinique but he should not claim for this visit since it

was not specifically referred and the evidence surrounding this episode is riddled with unexplained discrepancies.

- [23] I therefore will not award the sums claimed for the travel accommodation therapy treatment and other care in Martinique.

Special Damages for loss of earnings/construction

- [24] In support of his claim for damages for loss of earnings from construction, Mr. Maurice produced a number of letters, and contracts for services rendered. These do not appear to be challenged other than in a general way, because there is no evidence of a submission to Inland Revenue in relation to monthly or annual earnings from construction. The sum claimed being \$216,000.00 would therefore be awarded under this head.

Earnings from Banana Cultivation

- [25] A number of receipts from St. Lucia Banana Growers Association were produced to support the claim of \$180,000.00. Again the only challenge to this figure was the question whether any submission was made to Inland Revenue re: the earnings from the farming. In response Mr. Maurice said that the Banana farmers did not pay taxes.

Since there is no further challenge on this matter the court will make the award for \$180,000.00 as the losses incurred for the three year period during which the Claimant could not work on his banana farm.

Earnings from cricket umpiring

- [26] In support of the claim for earnings from this head, the Claimant produced a letter dated 13th February, 2008 from Bryan Calixte which confirmed that Mr. Maurice was employed as a cricket umpire and was paid for officiating in this capacity.

Since this does not appear to be challenged the court will make the award that was stated in the sum of \$10,500.00.

Medical fees and related costs

- [27] Based on the receipts made available to the court it does not appear that the Claimant spent more than \$5000.00 on medical expenses in Saint Lucia. I therefore award him \$5000.00 under this head.

I have earlier indicated that the Claimant would not be compensated for the sums expended in Martinique. The total for special damages is therefore \$411,500.00.

General Damages

- [28] In relation to General Damages counsel cited the case of **Baldoe v Prestige Car rentals Ltd & Ors.** which was dated 22nd November, 2000 in which the High Court of Trinidad and Tobago awarded the sum of TT\$170,000.00 for pain and suffering for a serious knee injury, TT\$100,000.00 for loss of pecuniary prospects and TT\$12,960.00 future surgery.

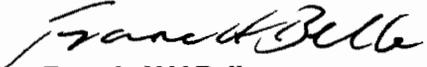
I am willing to accept this case as a guideline for the injuries suffered by Mr. Maurice. Since the TT dollar does not have the same value as the EC dollar it is necessary to make some adjustments to compensate for the difference in value. Counsel suggested the TT\$ rate is calculated as $(\$170,614.00 \text{ TT} \div 6) \times 2.7169 = \$77,300.00 \text{ EC}$.

I have no reason to question this approach. It is also necessary to make an adjustment for the time that has passed and average 3.7% inflation since the claim was made and since trial. I am willing to add the sum of EC\$10,000.00 to compensate for the delay.

I award special damages as assessed above in the sum of \$411,500.00 with interest at the rate of 6% per annum from the date of the Claim until payment.

On these premises I award the Claimant EC\$87,300.00 for pain, suffering and loss of amenities in keeping with the guidelines laid down in **Cornilliac v St Louis** (1965) 7 WIR 491. I award interest at the rate of 6% per annum from the date of the accident to the date of trial and at 6% per annum from the date of the trial to the date of payment.

I award costs to the Claimant in the sum of \$49,880.00


Francis H V Belle
High Court Judge