

IN THE SUPREME COURT OF GRENADA AND
THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

CLAIM NO: GDAHCV2011/0424

BETWEEN:

ERROL EDWARDS

Claimant

and

GABRIEL GEORGE

Defendant

Appearances:

Ms. P. Nicola Byer of Counsel for the Claimant
Ms. Yurana Phillip of Counsel for the Defendant

2012: March 30th
2013: March 25th

JUDGMENT

TAYLOR-ALEXANDER M:

Background facts

[1] On the 5th day of February 2011 at Corinth in the Parish of St. David the claimant was driving P-8779 along the eastern main road in the direction of St. Georges,

when the defendant, at the time, driving PO-22 approached with great speed from the opposite direction, swinging out onto the claimant's side of the road.

- [2] The defendant collided with the claimant's SUV on the front right, causing injury loss and damage. As a result of the impact the claimant suffered from a fractured right hip with tenderness on palpitation; puncture wound to the proximal lateral aspect of the right leg; swelling and soreness to the right knee and abrasions to the left knee, forehead and the right side of the face. He was admitted to the general hospital where he underwent an X-ray and traction was placed in his right leg. He was discharged from the general hospital after 14 days.
- [3] By claim form and statement of claim filed and served on the defendant on the 28th September 2011, the claimant brought an action to recover his pecuniary and non pecuniary loss resulting from the accident. The defendant filed a defence in which he did not dispute the facts as alleged in the statement of claim opting instead to prove the quantum of damages to be awarded to the claimant for his special damages, general damages and costs. As a consequence, judgment was entered on admission and on the 6th March 2012, this Court issued directions for the hearing on assessment of damages. Submissions in support of assessment were filed by each party on the 30th March 2012.
- [4] I am now required, based on the judgment, affidavit and submissions filed, to assess the quantum of damages payable by the defendant for the injury loss and damage suffered by the claimant.

Quantum of Damages

- [5] The claimant's claim for special damages and reimbursable loss totals \$20,953.38 and is explained thus:—
- (a) Costs of Crutches \$195.00
 - (b) Costs of Medication \$51.38
 - (c) Costs of X-ray \$85.00

- (d) Costs of domestic care for 57 days at the rate of \$40.00 per day
\$2280.00
- (e) Loss of Income from 8th February 2011 to 17th April 2011
\$6250.00
- (f) Value of the Claimant's Sports Utility Vehicle (SUV) \$12,000.00
- (g) Cost of valuation \$92.00

\$20,953.38

[6] The defendant disputed the awards for domestic care and loss of income, on the basis that the same have not been strictly proven. Having reviewed the evidence submitted I find the claimant to have proven sums of \$423.38 with respect to the costs of crutches, medication and X-rays. These sums are undisputed and are awarded.

Costs of Domestic Care

[7] There is no documentary evidence offered in support of this loss.

[8] A court can make an award which includes provision for domestic services which the claimant's injuries have incapacitated him from doing and for which he is forced to obtain assistance, provided of course, that those services arose out of the injury in relation to which damages are requested.

[9] The lack of evidentiary support made this award difficult. Admittedly, the nature of this type of award makes precise proof arduous. If however a basis for reasonable ascertainment of the amount of damage is provided, the court can usually formulate an award. Medical evidence of the period of incapacity for instance and

evidence of how, if any, the claimant's usual mobility has been compromised and of the average cost of employing household labour are the types of evidence on which the court can place reliance. Those details were not pleaded or provided. Even the medical reports provided offered no useful assistance on the period of incapacity and on the claimant's mobility during the affected period and as such any award under this head is speculative. I therefore make no award for domestic care.

Loss of Income

- [10] I was similarly challenged with an award for loss of income. A claimant, injured as a result of someone's negligence is entitled to be compensated for their past loss of income up to the date of judgment, as well as any ongoing income losses they may continue to suffer in the future. In such a claim it is the evidence of financial loss that this court must be concerned with. The evidence in support of this assessment does little more than to satisfy me of what it states; that the claimant did not work for a 10 week period following the accident. No evidence was submitted as to lost income and I am constrained to make an award.

Loss of the SUV

- [11] The defendant agrees the loss of the SUV but submits that only an award of \$10,000.00 is appropriate. I agree. The report of Pegs Enterprises Limited, the Accident Repair Centre, establishes the pre accident value of the vehicle to be \$12,000.00 with the salvage being \$2000.00. No basis has been provided for an award in excess of \$10,000.00. Consequently I award the sum of \$10,000.00 as loss for the SUV for a total award in special damages of \$10,423.38.

General Damages

- [12] The claimant relies on the authority of Cornilliac v St. Louis [1965] 7 WIR 491 in which Wooding CJ identified the following considerations which I must bear in mind when considering a personal injury assessment namely:- (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.
- [13] The medical report of Dr. Kestor Dragon, issued shortly after the accident offers no assistance in terms of maximum medical improvement of the claimant and the long term impact if any arising from the injury. The medical report issued on the day of the accident by Terron A Hosten is similarly unhelpful.
- [14] In his affidavit in support of assessment the claimant states that although the wound to his right leg has healed he continues to experience a persistent lancing and that the scarred area is growing with a bulge. He states that he is a truck operator and that his primary cargo is concrete blocks which he could load himself with the assistance of his conductor. He claims that he is now not able to bear the weight of heavy loads and he is required an additional person for the loading of blocks at a cost of \$50.00 each time. Gardening his land at Providence has stopped as a result of the injury as he risks further aggravation of his injuries. He has gained weight which he says is attributed to his reduced mobility and he has been emotionally traumatized by the scarring in the area of his injuries. None of the reduction in mobility subsequent to the injury is supported by medical evidence, and the long term impact of the accident comes from the claimant himself, which evidence, is in itself self serving and though not challenged, I am free to accept or reject, or reject it in parts.
- [15] The defendant challenges the evidence of the claimant urging the court to confine itself to the medical evidence and its conclusions in relation to the injury sustained.

[16] Having considered the nature of his injuries and the pain, suffering and loss of amenities he has deposed to have suffered, the claimants' counsel submits that an award of \$110,000.00 is an appropriate award in the circumstances to compensate for his non pecuniary loss. She offers the following authorities as guidance to the court:-

(a) Lincoln Carty v Lionel Patrick Saint Christopher and Nevis Claim Number 54 of 1998 where in 2009 the High Court in St. Kitts awarded the claimant \$175,000 for pain and suffering and loss of amenities for a fracture of the right femur, fractures of the inferior pubic ramous (pelvis), fractures of the right 3rd and 8th ribs posteriorly, laceration and contusion of the right knee, contusion of sciatic nerve in the right leg, permanent dislocation of joint in the sternum, bruising and laceration of front left rib cage and cervical strain (neck), resulting in continuous pain and discomfort, including severe and prolonged migraine headaches. The claimant underwent surgery, during which a steel rod was placed in his femur, he remained hospitalised for 32 days and, on his release from hospital, he remained home for 6 months. Twelve months after the first surgery the claimant underwent a second surgical procedure to remove the steel rod and was away from work for about 6 weeks. His right leg is now shorter than the left; he has received physical therapy treatment and chiropractic care and has been seen by many health care professionals. He is no longer able to be involved in sports, which he was very involved in prior to his injuries, he is forced to use a cane because his right knee buckles on a regular basis, he suffered post traumatic stress, severe bouts of depression, his relationships both at work and at home have suffered as result of the difficulty of dealing with his pain and his lack of sex drive has caused much strain in his relationship with his wife.

(b) Ronald Fraser v Joe Dalrimple ANUHCV2004/0513 decided in 2010 where 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 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 awarded the:- general damages for pain and suffering in the sum of \$85,000; 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.

[17] The defendant discounts the sum of \$110,000.00, submitting that an award of \$25,000.00 should be made for pain and suffering. She supports her contention with the case of Moore and Beharry (no citation provided), reported in Daly's on Damages. Where in 1970, a claimant who suffered a fracture of the right acetabulum was awarded the sum of \$2000.00 adjusted to April 2007 \$43, 299.00.

[18] I do not find the authorities supplied by the claimant to be comparable. From my own research I found the following authority which in my considered view is more proximate to the injuries of the claimant:-

(a) Marcel Fevrier v Bruno Canchan SLUHCV1989/313 a case involving two claimants, both of whom suffered significant injuries. The first claimant

(Marcel Fevrier) sustained a fracture of his left leg, fractures of the toes of both feet, a fracture of the right hip and a fracture of the right knee, which resulted in tremendous pain and hospitalization for two months, plus another four months at home in bed for most of the time suffering and unable to move around. He was awarded \$50,000 for pain and suffering and loss of amenities.

I have considered the physical injury sustained by the claimant and the pain and suffering endured according to his evidence, I juxtaposed his evidence with the medical evidence provided, cognizant of the date of the reports, and I have considered the authorities referred to herein and award the sum of \$50,000.00 for pain suffering and loss of amenities.

Interest

[20] Interest is awarded on special damages at the rate of 6% from the date of the accident to the date of payment in full; and on general damages for pain suffering and loss of amenities at the rate of 6% from the date of judgment, to the date of payment in full.

Summary and Order

[21] 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 \$10,423.38 with interest thereon at the rate of 6% from the date of the accident to the date of judgment and thereafter at the rate of 6% until payment in full; and on pain and suffering and loss of amenities the sum of \$ 50,000.00, together with interest thereon at the rate of 6% from the date of judgment to payment in full. I further award the claimant costs being \$5,438.11 being prescribed costs on the sum of \$60,423.38.

V. Georgis Taylor-Alexander

High Court Master