

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

GRENADA

SUIT NO. GDAHCV2007/0055

BETWEEN:

[1] Sheena David

[2] Alana David

Claimants

AND

[1] Kingston Bowen

[2] Ashton Bowen

Defendants

Appearances:

Ms. Sandina Date for the Claimants

Ms. Denise Campbell for the Defendants

2013: May 13th

2013: June 7th

ASSESSMENT OF DAMAGES

- [1] **Taylor-Alexander, M.** The claimants are sisters and are judgment creditors in an action brought for negligence against the first and second named defendants the owner and driver respectively of a vehicle in which the claimants were passengers, when the vehicle ran off the road, capsizing and resulted in the injury, loss and damage to the claimants.

The accident occurred on the 9th of October 2006. The claimants were at the time 16 and 12 years old respectively and were both students at the St. Joseph's Convent in St. Georges, Grenada.

- [2] This matter comes on for assessment of damages pursuant to a judgment entered for the claimants under part 12.5, and 16.2, of the Civil Procedure Rules 2000 (CPR).

Medical evidence of first named claimant

- [3] The first named claimant suffered from soft tissue injury to the neck and shoulders; ligamentous strain and muscle spasms; significantly reduced range of motion of the cervical spine and neck pain. The prognosis of Dr. Douglas Noel, Consultant Orthopaedic Surgeon on the 15th November 2006 was that the shoulder symptom would resolve and that the first named claimant may in the future have intermittent pain in the neck according to activities such as lifting or moving her head to the extremes. He reported that she would have increased incidence of arthritis developing in the neck in the future.
- [4] On the 14th February 2008 and upon further assessment of the injury, Dr. Douglas Noel confirmed that the neck and shoulder injuries were soft tissue in nature. He concluded that the bilateral shoulder pain will continue indefinitely into the future, on and off according to activities. Neck movements are still significantly reduced and he would expect the symptoms of neck pain to continue on and off in the future with an increase chance of arthritis developing in the cervical spine. A final examination was concluded on the 21st October 2010 when Dr. Noel found that the neck pain and lower back pain continues and the first named claimant continues symptomatic. He concluded that the first named claimant has chronic ligamentous inflammation in these regions and that her pains will continue on and off in the future according to posture and movements. She also has arthritis developing in the cervical and lumbosacral spine which will contribute to those pains.

Medical evidence of the second named claimant

- [5] The second named claimant was in the bus when it lost control. During the confusion of the accident she was tossed and someone stood on her neck. On assessment at the

casualty department she was noticed to have tenderness of the back of the neck. She developed back pain soon after the accident. On examination by Dr. Douglas Noel, she was found to have reduced sensation to touch in the right C5 and C6 dermatomes. There was also reduced range of motion of the lumbosacral spine. X-rays of the lumbosacral spine revealed no fracture or dislocation or subluxation. There was slight scoliosis of the lumbar spine. She was treated with non-steroidal anti-inflammatory medication and was directed to continue using a cervical collar issued by the casualty department. Further medical examinations were conducted by Dr. Noel on the 17th November 2007, the 12th February 2008 and the 11th October 2010. At the date of the last report, examination revealed that the second named claimant suffers with left knee and left hip pain associated with her lower back injury. Clinical examination of these joints was normal. She suffers from lower back injury at the lumbosacral region and now with radiological findings of scoliosis. Spinal, cervical and lumbosacral pain may continue on and off indefinitely and may worsen by lifting, jogging and sitting. She has an increased chance of arthritis developing in the lumbosacral region and with the radiological findings of scoliosis, she has an increased chance of arthritis developing in the lumbosacral spine which can lead to chronic back pain. Her neck pain due to cervical spine soft tissue injury from the accident will continue off and on into the future, and there is increased chance of cervical spondylosis (arthritis) developing in the cervical spine.

Evidence of Sheena David

- [6] Ms. David was 16 at the date of the accident and a student in form 5 of the St. Joseph's Convent. She was forced to stay away from school on several occasions. She recalls immediately experiencing neck, shoulder and lower back pain when she attempted to climb out of the bus after the accident. She was assessed at the casualty department and was advised to get a cervical collar. She states that she lives in constant pain, which pain worsens when she is involved in physical activity such as household chores and during her menstruation.
- [7] Continuing secondary schooling was challenging as a result of the pain and injury, although she has since completed and had gone on to advanced level studies at T.A.M.C.C. She is currently a teacher at St. Georges Anglican Senior School, but states

that even now, standing for long hours and writing on the blackboard with her right arm, causes her pain and tremendous discomfort. Most days she is forced to take paracetamol to control the pain and although she loves the teaching profession, she feels that standing for long hours is not helping her lower back injury and she wishes for an alternative career field. It is due to the love and support of her mother, she states, who has preached the importance of a good education, that she endured the pain and continued her academic career. Her quality of life has been diminished both professionally and personally.

Evidence of Alana David

- [8] She too fell to the floor when the bus turned over during the accident and whilst on the ground she was walked over she alleges and during the panic someone stood on her neck. She was taken to the general hospital, and was advised to wear a cervical collar. The accident she claims has affected her life in many different ways. She states that she previously enjoyed outdoor activities such as cricket, football and basketball. She can no longer enjoy these activities and she feels like an outsider among her peers.
- [9] She deposes to feeling constant pain in her neck, left knee, left hip, and lower back on a regular basis. For the past few years, due to the constant pain, she has been absent from school on many occasions. She is forced to take pain killers on a regular basis to cope with the pain. Standing or sitting for long periods causes her a lot of back pain.
- [10] She had been known at school to be a happy young girl, always smiling. She was an excellent student and was well liked by teachers and by her students. Due to the constant pain, she claims to have lost interest in a lot of activities and is no longer a smiling bubbly personality. She too attended T.A.M.C.C., and has not yet decided on a career path. Her mother encourages her to continue her education but she finds difficulty dealing with the physical pain on a daily basis.

The defendants submissions on the evidence of the claimants

- [11] The defendants who chose not to defend the proceedings challenge the extent to which the claimants allege that their quality of life has been compromised. The defendants submit that the first named claimant's claim is exaggerated and they challenge her

evidence that she needs to continue standing at the chalk blackboard in modern teaching. They recommend that the evidence of the claimants be viewed critically.

Special Damages

- [12] The claimants jointly claimed for special damages of \$1,393.00. At the date of assessment and due to its continuing accrual, these damages ballooned to the sum of \$1,550.00 for the first named claimant and the sum of \$1,700.00 for the second named claimant. The increase in special damages is as a result of further medical assessments conducted by Dr. Noel to determine the maximum medical improvement of the claimants following their injury.
- [13] The sums claimed in special damages are unchallenged by the defendants. In the absence of receipts for all of these damages I find the sums incurred for the obtaining of three medical reports on behalf of each of the defendants to be proven by the provision of a receipt for one report costing \$550.00.
- [14] I therefore award the first named claimant the sum claimed of \$1,550.00 and the second named claimant the sum of \$1,650.00 in special damages for a total award of \$3,200.00.

Quantum award for General Damages

- [15] I am reminded of the usual principles outlined by Wooding CJ in **Cornilliac v. St. Louis** (1965) 7 WIR 491 in assessing quantum as follows:

- (i) The nature and extent of the injuries sustained;
- (ii) The nature and gravity of the resulting physical disability;
- iii) The pain and suffering which had to be endured;
- (iv) The loss of amenities suffered; and
- (v) The extent to which the claimants pecuniary prospects have been materially affected.

- [16] Both claimants were teenagers at the time of the accident and in the application of the principles outlined in **Cornilliac**, particular consideration must be given to whether the claimants pecuniary prospects have been materially affected. By all accounts the claimants were diligent students who performed well at school. Both gained entrance to T.A.M.C.C. The teachers of the children felt compelled to submit reports that formed part of the claimants' evidence that demonstrated the enthusiasm of the children to their school life. The first named claimant is now gainfully employed as a teacher, and the second named claimant expresses reservation about pursuing further education although she has demonstrated the ability and is encouraged by her mother.
- [17] I have had regard to the medical reports submitted. I note that while the injuries sustained by both claimants were soft tissue injuries, they continue to endure pain which places some restriction on their daily activities. The first named claimant suffers with neck pain and lower back pain and she finds that her ability to discharge her duties as a teacher has been made difficult. The second named claimant also suffers with similar pain and her confidence to pursue her career path has been undermined.
- [18] Despite their obvious diligence as students and the evidence of on-going pain, it is difficult to conclude that the claimants' pecuniary prospects have been affected. The evidence I have considered, bears out, that over the period of time following the accident the first named claimant gained employment as a school teacher and there is likelihood that the second named claimant may pursue further education. In any event, the medical evidence which is instrumental in identifying the nature of the injury and any residual effect on the claimants' ability to work offers no conclusion on which the court can assume that the pecuniary prospects have been materially affected.
- [19] As regards an appropriate award, I agree with counsel for the claimants that there is a paucity of evidence on injuries involving children, and even greater paucity with those resulting in neck and back pain to allow for comparative analysis. Both counsels have relied on the case of **Anita Tobbit v Grand Royal Antigua Beach Resort Limited and Stanford Frederick ANUHCV2006/0026** (unreported), decided on the 13th October 2010.

The claimants rely on the authority to support a singular award in the sum of \$100,000.00 for the two claimants and the defendants rely on it to show that an award of \$50,000.00 for each of the claimants is excessive.

[20] The claimant in *Tobbit* was diagnosed with a prolapse of lumbar inter-vertebral disc/lumbosacral disc with diminished sensation in the dermatome distribution of L5-S1. The radiological findings were consistent with central and left lateral disc herniation at L5/S1 with impingement of the thecal sac, which resulted in a permanent disability of 8%, increasing in the future. Ms. Tobitt was likely to develop post traumatic degenerative joint disease as she got older. Her evidence also showed that her pecuniary prospects were materially affected by her injuries. She had been employed as a waitress prior to the accident and after the accident she found that lifting items or performing daily functions became challenging. An award of \$50,000.00 was made.

[21] The claimants urged the court to consider the medical evidence submitted which foretells a future for both claimants of limitation of movement, likely to worsen by heavy lifting, jogging and sitting, with permanent or recurring pain, stiffness and discomfort and the likelihood of developing arthritis.

[22] The defendants, considering the award in *Tobbit*, submit that while the case of *Tobitt* is relevant, the injuries suffered by Ms. Tobbit were more serious, with a strong likelihood that she will have to undergo surgery. At the time of her medical report her injuries had resulted in an 8% disability, which disability was likely to increase. The defendants caution against an award comparable to *Tobitt*.

Consideration of the evidence

[23] I have considered the case of Anita Tobbit and the award made therein. I have also considered all of the medical and other evidence submitted and the submissions of both parties. I have especially considered that both claimants were children at the time of the accident who even now continue to suffer from its impact. I agree with counsel for the claimants that the failure of Dr. Douglas Noel to state that there was permanent injury does not prevent the court from concluding that the accident resulted in the claimants having

long term incapacity. That is the effect of the conclusion reached by Dr. Douglas and I find that the quality of life of the claimants has been diminished by the accident.

- [24] Taking all these relevant matters into consideration, I consider the case of Anita Tobbit to offer sufficient guidance on a comparative award. I have however discounted that award made accounting for the loss of pecuniary prospect in Anita Tobbit which I have concluded is not present in this case. I do not however, see the need to vary the award significantly, and award Sheena David the first named claimant the sum of \$37,000.00 and Alana David the second named defendant the sum of \$35,000.00, which to my mind accords with the current awards for similar type injuries.

Conclusion

- [25] The following awards are made:—

- (a) The sum of \$3200.00 in special damages being the sum of \$1550.00 for the first named claimant and \$1650.00 for the second named claimant, together with interest thereon at the rate of 6% per annum from the 9th October 2006.
- (b) General damages to the first named defendant in the sum of \$37,000.00 together with interest thereon at the rate of 6% from the 22nd March 2007 and prescribed costs of \$3469.50; general damages to the second named defendant in the sum of \$35,000.00 together with interest thereon at the rate of 6% from the 22nd March 2007; and prescribed costs of \$3298.50.

V. GEORGIS TAYLOR-ALEXANDER

MASTER OF THE COURT