

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHCV2010/0753

BETWEEN:

CAROLINE SERIEUX

Claimant

AND

SPORTS ST. LUCIA INC.

Defendant

Appearances:

Ermine Moise of Counsel for the Claimant
The Defendant absent and unrepresented

2013: February 7th, May 16th
June 7th

JUDGMENT

- [1] **TAYLOR-ALEXANDER M:** This matter comes on for the assessment of damages for the personal injury loss and damage suffered by the claimant, an employee of the West Indies Cricket Board who was injured as a result of the ruin, want of repair, or otherwise the defect of the heavy metal entrance gate of the Beausejour Cricket Grounds, the main cricket ground in Saint Lucia usually the venue for the hosting international cricket matches.
- [2] On or about the 24th of February 2010, the claimant attempted to open the gate to gain access to the stadium for work, when it collapsed on her.
- [3] The ground at the material time was under the control of the defendant as the owner, occupier and manager.

- [4] The claimant who was 26 years old at the date of the accident was admitted to Tapion Hospital where she remained for 18 days. During that period she was unable to walk for 8 days after which she commenced partial weight bearing using a walker frame.
- [5] Dr Horatius Jeffers Orthopaedic Surgeon who examined the claimant and reported on the claimant's injuries on the 11th May 2010, found that she had suffered a closed fracture of the pelvis involving the left superior and inferior pubic rami and the ala of the sacrum on the left side. She also suffered soft tissue abrasions and contusions to the right upper limb. She was initially administered Analgesia in the form of tablets and injections for management of her pain consequent on her fractures. Antithrombotic measures were undertaken to reduce the incidence of the development of blood clots in her lower limbs consequent on the fracture. She was also required to undertake a programme of physiotherapy for restoration of lower limb joint range of motion; lower limb muscle and ligament flexibility and strength.
- [6] At her clinical evaluation on the 24th April 2010, she was fully ambulant without the use of a walking aid. She complained of non-specific weakness of the lower limbs on activity along with dizziness, and she reported an incident of numbness of both lower limbs which had occurred one week prior to consultation. On examination her general physical was normal. She walked with a limp. There was no tenderness of the pelvis with normal range of motion of both hips and no leg length discrepancy. Neurological examination of both lower limbs revealed intact functioning of the neuromuscular system. Investigations at the time confirmed that healing of the left pelvic fractures was progressing satisfactorily. Her blood count was normal. As to the effect of the accident on occupation and social and leisure activities, Dr Jeffers found that for a minimum period of eight weeks the claimant would not have been able to function as an administrative assistant/ senior ticket agent and her sport and recreational activities which require weight bearing would be curtailed for a similar period.

- [7] In the claimant's own evidence she alleges that before the accident she was quite active, and loved sports. She went jogging regularly in the morning and enjoyed going out with her friends. She claims to have been depressed for a long time following the accident. She lived on the third floor of an apartment building with no elevators, and needed help to get up and down the stairs, which was uncomfortable for her. She says that she still suffers from back spasms frequently which she had not experienced prior to the accident.
- [8] Although a review assessment was recommended by Dr. Jeffers at eighteen months post injury, there is no evidence that one was done.
- [9] The claimant brought an action against the defendant for liability as occupier. Judgment was entered at an early stage of the proceedings in default of acknowledgment of service, with damages to be determined on the 7th February 2013. The assessment was forced to be adjourned to the 16th May 2013, as the claimant was not at the time ready to proceed with the assessment. The defendant was served on the 6th May 2013 with the affidavit in support of assessment and the order of the 7th February 2013 adjourning the proceedings to the 16th May 2013.
- [10] The matter is ripe for assessment of damages.

Quantum of Damages

- [11] I had previously advised counsel for the claimant that having reviewed the claim for special damages and reimbursable loss of \$1,279.00 I found the same to have been made out.
- [12] I therefore award special damages of \$1279.00, the sum claimed by the claimant.

General Damages

- [13] Counsel for the claimant directed the court to the case of Cornilliac v St. Louis¹ and the accepted factors outlined 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.
- [14] I have considered the pleadings and affidavit evidence. In applying the factors identified by Wooding CJ, I have particularly considered the medical reports of Dr. Jeffers, the attending physician. In her affidavit in support of assessment the claimant alleges that she continues to have a slight limp although, her failure to undertake the eighteen month assessment did not allow for a confirmation of maximum medical improvement.
- [15] The claimant contends that an award of \$75,000.00 would be consistent with awards made regionally for similar type injuries and as compensation commensurate with the injury suffered. Reliance was placed on the authority of **O'Garro V Ross** SVGHCV2004/0324 where the claimant a thirty year old suffered a fracture of the acetabulum to the right hip, and hip dislocation, resting in a permanent limp. There was a likelihood of development of avascular necrosis and post traumatic arthritis of the hip. Counsel admits that this fracture was significantly more severe and is consequently not a comparable award. In that case the claimant was awarded \$140,000.00 for pain and suffering and loss of amenities.
- [16] Counsel also relied on the Trinidadian authority of **Sealy v Stewart** 1686 of 1969 extracted from Daly's on Damages, where in 1972, an award of TT\$7000.00 was made for a fracture of the acetabulum which healed but which caused osteo-arthritis of the left hip which at the time of trial was causing pain from time to time.

¹ [1965]7 WIR 491

There was an apparent shortening of the lower limb caused by adduction contracture. The claimant also suffered a dislocation of the left patella and lacerations that left some inconspicuous facial scars, except for one that in the region of the left ala which had a contracture. Updated to December 2011 and converted the award is consistent with a figure of XCD\$60,435.04

[17] I also considered the case of **Ronald Woods vs. Irvin Joseph** SVG 506/2005, delivered in August 2007, in order to satisfy myself that an award made is maintained in the region of the type of award made for injuries of that category. In that case 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. He was awarded \$40,000.00 for pain and suffering.

[18] 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 I am satisfied that an award of XCD \$57,000.00 for pain suffering and loss of amenities is reasonable.

Conclusion

[19] The total damages which I award the claimant for personal injuries, loss and damage consequent upon the accident is as follows:—

- (a) Special damages of XCD\$1279.00 with interest thereon at the rate of 3% per annum from the date of the injury to the date of judgment on assessment and at the rate of 6% per annum to date of payment.
- (b) General Damages for pain and suffering and loss of amenities in the sum of XCD\$ 57,000.00, together with interest thereon at the rate of 6% per annum from the date of service of the claim to date judgment on assessment and thereafter at 6% per annum to date of payment.

[20] Costs are to be prescribed costs at the rate of 60% of the full prescribed costs on the sum of \$58,279.00 being \$5245.11, the matter being concluded on assessment following default judgment.

V. Georgis Taylor-Alexander

High Court Master