

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 66 OF 2009

BETWEEN:

ANTHONY BACCHUS
(of Cane Garden)

Claimant

V

BOTTLERS ST. VINCENT LIMITED
(Camden Park)

Defendant

Appearances:

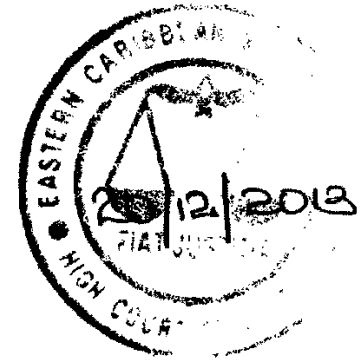
Mrs. Kay Bacchus-Browne for the Claimant.
Mr. Joseph Delves for the Defendant.

2011: March 9th
2013: December 20th

JUDGMENT

[1] **BRUCE-LYLE, J** :— By way of a claim form filed and dated the 16th April 2009, the Claimant Anthony Bacchus who resides at Cane Garden, in the State of Saint Vincent and the Grenadines claimed against his former employers Bottlers St. Vincent Limited for the following:-

- (1) Special damages for personal injuries sustained while at work with the defendant, in the sum of \$134,600.00;
- (2) General damages;
- (3) Further and other relief;
- (4) Costs.



- [2] The Claimant is an adult who was employed with the Defendant as Manager of Mount Gay Rum from 2003 to 2007. On the 10th April 2006 the Claimant was on duty at the Defendant's work premises.
- [3] While on duty, the Claimant avers that he slipped down the stairs leading from the ground floor to the first floor, which housed the offices of the Manager, computer room and Board Room at the Kingstown Wholesale and Retail and in the process injured his back.
- [4] The Claimant further stated in his claim that subsequent to this injury, the Defendant paid his initial medical expenses, but later refused to meet further expenses claiming that it was too expensive and scared the Claimant into submission in order to keep his job.
- [5] The Claimant was later dismissed from his employment in January 2007. The Claimant further stated that he continued having medical problems with his back but was reluctant to insist that the Defendant meet these medical expenses for fear of losing his job.
- [6] This led to the Claimant experiencing financial difficulties and he sought legal advice from two lawyers who failed to file a claim despite instructions so to do.
- [7] The Claimant further stated in his claim that on the 29th September 2008m through his lawyer Kay Bacchus-Browne he wrote the Defendant claiming \$134,600.00 compensation for damages due to the injury sustained. This letter was tendered as part of the Claimant's bundle of documents or Exhibits to prove his case.
- [8] The Company (Defendant) as is obvious from this Suit refused to entertain the Claimant's demands as per his letter of 29th September 2008,
- [9] It is interesting to note that the Claimant stated in his claim that this was not the first time employees of the Defendant Company slipped on the said stairs injuring themselves.

[10] He stated in his claim that in 2003 Mr. Cyprian Neehall, a former employee of the Defendant slipped on the same stairs and damaged himself and was not compensated.

[11] The Claimant itemized the particulars of Special Damages as follows:-

For medical operation	-	\$75,000.00
Air Fare	-	710.00
Accommodation	-	3,000.00
Pain and Suffering	-	50,000.00
Loss of Earnings and of Future Earnings	-	53,000.00
After Care Therapy	-	3,000.00

[12] The Claimant also itemized the particulars of injury as follows:-

- (1) Antalgic gait.
- (2) Right hip painful and rocking.
- (3) Severe degenerative osteoarthritis of right hip.
- (4) A permanent partial disability of 60%.
- (5) Lumber muscle spasm.
- (6) Marked narrowing at the L5/S1 Intervertebral disc space.
- (7) Aggravated sclerosis at the (L) facetal articulation.

[13] The itemization under paragraphs 11 and 12 above form the basis of the claim for damages for personal injuries as already mentioned earlier in this judgment.

THE EVIDENCE

[14] Basically the Claimant in his witness statement repeated what was contained in his claim form, particularized the special damages and the injury. The particulars of the injury, to my mind, were not seriously disputed, and on this I agree entirely with Learned Counsel for the Claimant, Mrs. Kay Bacchus-Browne, when she posited this view in her written submissions.

- [15] The only issue raised by Learned Counsel for the Defendant Mr. Joseph Delves was in cross-examination of the Claimant as to whether anyone saw him actually fall and whether the steps were dangerous in fact.
- [16] In all, the Claimant called two witnesses, Mr. Cyprian Neehall to support the claim that the steps were "difficult to navigate" and that other persons including him had fallen on the steps and that the steps were "dangerous except one was very cautious in using it." The Claimant also had as his second witness Dr. Perry De Freitas who gave expert evidence. His medical report and opinion was not controverted by the Defence. The Court will therefore place full emphasis and reliance on this report.
- [17] The Defendant did not file any witness statements and had no witnesses.
- [18] It is therefore not in dispute, from the facts, that the Claimant was employed with the Defendant when he fell on the 10th April 2006; that the Defendants paid the Claimant's initial medical expenses and then stopped; that the Claimant was dismissed from his job as his medical situation deteriorated; and most tellingly, that the Defendant has failed to file witness statements or make any appointment for the Claimant to visit the doctor as requested in the Case Management Order dated the 28th October 2010.
- [19] Having set these parameters in relation to the facts of this case, the main issue for me to determine is whether the Defendant is liable to the Claimant for his injuries, as the injuries are not in dispute or been controverted in any way at all, and in any case, apart from the Defendant's purported defence filed in answer to the Claim, no evidence was adduced by the Defendant to support his averments in his filed defence. No witness statements were filed by the defence and at best at trial, cross-examination of the Claimant and his witnesses was rather lukewarm.
- [20] I do not agree with Learned Counsel for the Claimant when she states that the consequence of failure to file witness statements amount to the Defence filed being struck

out. She cites in support the learning in the case of *Elwardo Lynch v Ralph Gonsalves* (St. Vincent and the Grenadines Civil Appeal No. 18 of 2005), of 18th September 2006. That case dealt with a failure to file a defence and its consequences. In this case a defence was filed but no evidence was led to support it.

- [21] I do not intend to dwell on this basic distinction. No evidence was led by the defence except its lukewarm cross-examination of the Claimant's witnesses. This court is therefore left to determine if the Claimant's evidence together with his witnesses' evidence is credible enough to be awarded judgment as against the defence's failure to adduce evidence. It is as simple as that.
- [22] None of the claims put forward by the Claimant has been challenged in any way by evidence. Counsel's written submissions do not amount to evidence in my view. It is counsel stating his opinion as is his right at trial to convince the Court one way or the other.
- [23] Counsel for the Defence has tried to impinge on the evidence of the Claimant both in his statement and under cross-examination. If as the Claimant stated that the steps were "slippery for wear and tear" and the "lighting in that corner was quite poor" (where the Claimant said he fell) whose statutory duty was it to rectify these? The Claimant's? I answer with a resounding no. The Defendant had a statutory duty to provide a safe place of work which on failure amounted to Negligence on their part.
- [24] Mr. Cyprian Neehall supported the Claimant's assertion that other workers including himself had fallen on those same steps, with himself suffering injuries which required him to walk with a stick for a while. Whether anyone else saw the Claimant fall is neither here nor there. I have no reason to doubt Mr. Cyprian Neehall's evidence and his assertion that on his reporting his fall to management it was literally brushed aside as if it was of no moment.

[25] Neither has Dr. Perry De Freitas' evidence as a medical expert been challenged in anyway. Apart from Dr. De Freitas' findings other doctors who examined the Claimant almost came to the same conclusions. And it is this, there was some degenerative condition existing in the Claimant's right hip and other areas of his bone structure before the fall. This is perfectly normal in any human being. Before the fall the Claimant said he did not have any problems with his hip or walking. The fall exacerbated the already existing conditions whereby he is now disabled by about 60%. His mobility as a normal person has been reduced by 60%. The trite maxim in law in these situations, "Take your victim as you find him," comes into play in this case.

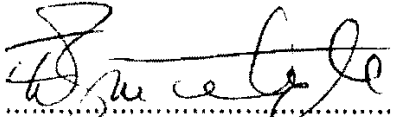
[26] My view is despite some degeneration to the Claimant's bone structure, especially his right side; he was walking perfectly alright until that fall. I find that the fall has reduced his mobility by about 60% and there is no evidence from the Defence to controvert or contradict this view.

[27] Learned Counsel for the Defendant raised preliminary objections at the commencement of the trial. Reason for these objections was premised on the fact that the Claimant did not file witness statements by the 1st October 2010 as ordered by the Master on the 19th May 2010. Instead the Claimant filed on the 26th October 2010. Counsel for the Defendant reasons that the Court has no discretion to allow the giving of evidence in those circumstances as there was no relief from sanctions pursuant to Part 26.8 of the CPR and that the Claimant and his witnesses could not be called to give evidence under CPR Part 29.11. This submission was overruled by me at the commencement of the trial as I took the view that "he who comes to court must come with clean hands" a very trite maxim of equity. The Defendant, who makes this allegation of no relief from sanctions, did not observe or adhere to the Learned Master's order of 19th May 2010 at all. Instead he relies on a mere technicality to derail the overriding objectives of the CPR 2000.

[28] I need not say any more on that issue, except to say that this is a case that cried from inception for mediation. Why was there no order for mediation is a question I cannot answer. Was it intransigence on the part of either party?

CONCLUSION

- [29] I therefore in conclusion find from the facts and evidence adduced that the Claimant has proven his case to my satisfaction there being no evidence adduced by the Defendant, and I being satisfied that the Claimant is a credible Claimant, and his witnesses credible witnesses whose evidence was not contradicted or controverted in any way.
- [30] I dismiss the Defendant's defence filed in answer to the Claimant's Statement of Claim and give judgment to the Claimant.
- [31] Since the trial was to determine liability only, I would stand on that decision made and refer this case to the Learned Master for Damages and Costs to be assessed.


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Justice Frederick V. Bruce-Lyle
HIGH COURT JUDGE