

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2013/0964

BETWEEN: VERONA CHANELLE FAUCHER

Claimant

and

(1) KENSON DONACIEN
(2) LESTER CHARLES

Defendants

APPEARANCES :

Mrs. Lydia Faisal of Counsel for the Claimant

Mrs. Esther Greene-Ernest of Counsel for the Defendants

2014: 5th, 11th August

DECISION ON ASSESSMENT OF DAMAGES

[1] TAYLOR-ALEXANDER. M; In the wee hours of the 25th of December 2010, Verona Faucher set off from her home to work, destined, together with her fellow employees, to ensure that the festive yuletide Christmas season began for the guest holidaying at St. Lucia's Jalousie Resort in picturesque Soufriere. Unaware she was, as she set off at 5.30 am that morning that disaster was to befall the very bus that was to transport her to the resort where she worked. In fact she would not have reached work at all that day. During the decent of a steep concrete hill along the Jalousie road, the bus, driven at the time by the 1st defendant and owned by the 2nd defendant skidded out of control on the wet concrete surface into a pile of

boulders and a tree. Verona was seriously injured and had to be transported to St. Jude's hospital for emergency care. She remained there until the 1st day of January, 2011.

- [2] Proceedings were filed against both defendants for negligence and damages. Judgment was entered in default when the proceedings were not defended. Damages for the injury, loss and damage suffered by the claimant as a result of a road accident have come on for assessment.
- [3] The assessment was fixed for hearing on the 5th day of August 2014. At the outset of the hearing, the defendants who actively participated in the assessment confirmed having made an interim payment of \$20,011.96 on the 6th June 2012, the receipt of which the claimant acknowledged. I, having read the pleadings, the written submissions of the claimant and following the hearing of the oral submissions of the parties, I have assessed damages as follows:—

Special Damages

- [4] This includes all the items of damage capable of more or less precise calculation, and in this case it comprises medical and other expenses and loss of earnings to the date of the filing of the claim. The following were submitted as incurred loss:—
- i) **Medical and Miscellaneous.** This included the hospital bills and expenses incurred and outstanding to St. Jude's Hospital, The total award agreed was for the sum \$2092.50. That sum is awarded.
 - ii) **Loss of Earnings:** The parties are agreed on the daily rate of \$36.00, from the date of accident being 25th December 2010 to 30th November 2013. A total of 34 months at \$792.00 per month for a total sum of \$26,928.00. From this sum deductions are made of sums paid by employers towards her salary in 2011 of \$7697.65 and in 2012 of

\$3143.55. Further deductions are made for payments out by the National Insurance Scheme for the period February 2011 to December 2011 in the sum of \$9799.48. It is agreed that the sum outstanding and owing for loss of earnings is \$6287.32.

iii)	Total loss for special damages	\$ 8739.82
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General Damages

- [5] Our courts have directed the assessment of general damages under guidelines approved in **Cornilliac v St. Louis** (1964) 7WIR 491 at 492. These are stated to be (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. I have given due consideration to these guidelines in the determination of an appropriate award.
- [6] Medical reports were provided by Dr. N Dagbue and Dr. Shanelle Durand with regards to the injuries sustained. According to the reports, the claimant, who at the time of the accident was 27 years old, suffered with a fracture of the traverse process of L4 and L5 vertebrae, fracture of the right wing of sacrum; a fracture of the superior and inferior pubic rami on both sides with separation of the symphyses pubis and post traumatic vaginal bleeding.
- [7] She was hospitalized for approximately 7 days, during which time she was managed non-operatively with bed rest. She was seen by the gynecology team for the vaginal bleeding. Following discharge she was seen for physiotherapy in the orthopedic out-patient clinic until the 29th of January 2011. By the 15th of March 2011 she was found to be stable and was not expected to undergo sudden incapacitation. At that time she complained of blisters over her pelvic area posteriorly and of pain when walking up and down hills, when she walked

distances and of difficulty running. She underwent a number of tests with internal medicine with regard to the blisters. By the 15th March 2011 medical opinion was that the fracture of the lumbar spine and sacrum would most likely cause her pain on and off for years to come. The pelvis fracture was likely to cause pelvis pain on and off for an undetermined period of time, aggravated by sitting or standing for prolonged periods of time and is likely to cause deep pelvic pain during any pregnancy and delivery. She was expected to have back pain when walking for long distances, running or walking up hill. She was likely to develop lumber spondyloses which, if it occurred, would cause her chronic lower back pain. If this occurred it was likely to be life-long. Her current medical condition is such that she can perform basic activities of daily living. Activities like washing and cooking if she is required to stand for long periods of time will cause her pain, and she is unable to do any jobs that require her to stand for prolonged periods of time, lift heavy items or stay in a bend position whilst working. She cannot participate in activities that require jumping or running. Sexual activity as well is affected. According to Dr. Dagbue she was unlikely to return to her job as a cook for 9-12 months from March 15th 2011. She had a period of total disability of one week, partial disability with support of three months and partial disability without support of 21 months. She was assessed to have a whole person impairment of 10%.

- [8] I have considered the authorities referred to me by the parties intended as guides to an appropriate award. In particular, I have considered cases provided by the claimant of **Monica Lansiquot v Geest Industries** PC 27 of 2001 where an award was made of \$60,000.00 for pain suffering and loss of amenities and **Lincoln Carty v Lionel Patrick** in 2009 the sum of \$175,000.00 was awarded for pain suffering and loss of amenities. The defendant on the other hand relied on other authorities in particular **Elisha Lewis v Worrell John** SLUHCV2003/0371 an award of \$65,000.00 was made for a 35 year old woman in 2005 for pain suffering and loss of amenities; **Claudette Francis v Cecilia Martin** HCVAP2009/007, an award of US\$45,000.00 was made for pain suffering and loss of amenities; and **Heidi Binder v Patrick Mcvey** BVIHCV2005/0006 where the claimant suffered

the following injuries namely (i) concussive head injury; (ii) frequent headaches; (iii) 5 cm laceration to her head; (iv) 3 cm laceration to her right ankle; (v) soft tissue injury to left chest wall; (vi) chest pains and tenderness of chest wall; (vii) difficulty in breathing; (viii) fractured pelvis; (ix) minimally displaced fracture to inferior and superior rami of left pubic bones; (x) undisplaced fracture of the right pubic superior ramus; (xi) long crack of the left ilium; (xii) mild separation of the right sacro-iliac joint; (xiii) 5cm longitudinal laceration of the left labia majora with slowly expanding haematoma; (xiv) spinal tenderness; (xv) tenderness over left chest wall; (xvi) tenderness of left iliac wing; (xvii) inflammation of thoracic spine; (xviii) spinal trauma which has left her spine "curved"; (xix) chronic back pain; (xx) severe insomnia; (xxi) cognitive dysfunction; (xxii) chronic pelvic pain; (xxiii) discomfort urinating and (xxiv) sexual dysfunction. She enjoyed swimming, boating, diving, dancing, hiking and running. She used to roller blade and play soccer. She is no longer able to enjoy these activities because of the pain which persists. The accepted overall percentage of disability was 31%. The claimant was granted a global sum for general damages for pain and suffering and loss of amenities of \$100,000.

[9] All of the authorities were relevant as to categorizing the nature of the injuries and the region of the award. There were natural disparities in the facts and circumstances of the cases, as truthfully, comparable awards are difficult to achieve, each case being distinguishable on its facts. In **Wells v Wells (1998) 3 AER 481** Lord Hope of Craighead observed thus:—

"The amount of the award to be made for pain, suffering and the loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the Court's best estimate of the plaintiff's general damages"

Our court of appeal cited similar observations in **CCCA Limited v Julius Jeffrey** C.A. No. 10 of 2003 as follows:—

“...it is, in my view, a function of the law, as far as possible, to be predictable, given the infinite variety of the affairs of human beings. In the context of damages for personal injuries, there are certain principles which apply and there is a discretion which needs to be exercised. In the case of pain, suffering and loss of amenity, that discretion could be wholly subjective and hence unpredictable, or it could be precedent based; that is to say; the trial judge, having considered all of the evidence led before him, would take into account other awards within the jurisdiction and further afield. Awards of similar injuries would be clearly very helpful in relating the claimant’s injuries on a comparative scale. This is not a precise science, leaving much room for the trial judge’s discretion”.

[10] Having considered these authorities and having considered the facts relied on by the claimant and the reports of Dr. Dagbue and Dr. Durand and applying my discretion thereto, I award the claimant the sum of \$130,000.00 for her pain suffering and loss of amenities.

The extent to which pecuniary prospects were affected

[11] According to the medical evidence, the claimant can no longer do jobs that require her to stand for prolonged periods at a time, lift heavy items or stay in a bent position whilst working. Remaining in the employment she held at the time of the accident would be challenging for her. The claimant is now a 31 year old female. She is unskilled and she is now unemployed. Her lack of skill limits the range of employment available to her and her injuries have now narrowed the employment opportunities to which she had access. The question for my consideration is whether she is incapable of earning a living at all or whether she capable of working but with decided disadvantage in the labour market, in which case this

court would have to consider an award to mitigate such disadvantage. Historically the later award was considered more appropriate where the person injured continued in their employment or even at a higher salary but with a strong likelihood that if they were to lose their employment they would most certainly be disadvantaged in the labour market. In the more recent decision in **In Cooke v Consolidated Industries** [1977] I.C.R. 635 Browne L.J.at page 640 said this:

"In my view, it does not make any difference in the circumstances of this case that the plaintiff was not actually in work at the time of the trial. The trial judge said: looking ahead as best I can with the information before me, I expect that the plaintiff will obtain employment pretty well immediately. ." The judge turned out to be quite right, because he did In Moelliker 's case at p. 261 of the report in [1976] ICR, 253, I said: "This head of damage only arises where a plaintiff is at the time of the trial is in employment." On second thoughts, I realise that is wrong. That was what I said but on second thoughts I realised that I was wrong; and, when I came to correct the proof in the report in the All England Reports, I altered the word "only" to "generally," and that appears at [1977 1 All ER 9, 15."

Although continuing work as a cook in the hotel industry will now be challenging I am reluctant to conclude that the claimant is incapable of a productive working life despite the incapacity created by the accident. After much deliberation I am of the firm view that the better course is to award a sum representing the claimant's disadvantage in the labour market. I award a sum of \$80,784.00 derived using a multiplier of 17 and at a deduction of 50% of her former monthly wage of 792.00.

Nursing Care

- [12] The parties agreed a daily rate for the provision of nursing care at \$50.00 per day for a period of three months from January 2011 to March 2011, a total of 90 days, being the period of temporary full disability, amounting to \$4500.00 and at the rate

of \$25.00 per day for 21 months the 1st April 2010 - 31st December 2012, the period of temporary partial disability in the sum of 15,750.00, for a total award of \$20,250.50.

Conclusion

[13] The following is a summary of the awards I have made:—

For special damages the sum of \$ 8739.82 which sum will carry interest at the rate of 3% per annum from the 25th December 2010 to the date of judgment and at the rate of 6% per annum from the date of judgment to the date of payment in full.

For general damages, for pain suffering and loss of amenities, the sum of \$130,000.00 and \$20,250.50 for nursing care, for a total award in general damages of \$150,250.50, together with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment in full.

For disadvantage in the labour market the sum of \$80,784.00 is awarded and on which I make no award for interest.

I am reminded of the interim payment of \$20,011.96 paid over by the claimants on the 6th June 2012, which discounts the global to be paid.

Conduct of the assessment

- [14] Both Mrs. Lydia Faisal and Mrs. Esther Greene-Ernest are thanked for their assistance to the court during this assessment both in the knowledge of the file and in the application of relevant legal principles and case law.

V. GEORGIS TAYLOR-ALEXANDER

HIGH COURT MASTER