

ST VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL



CLAIM NO SVGHCV2013/0096

BETWEEN:

CLEOS BILLINGY

Applicant/Claimant

AND

[1] KEVON JESSIE-DON ANDERSON

[2] LEONET ANDERSON

Respondents/Defendants

Appearances:

Ms Patricia Marks and Mr Andrew Russell for the Applicant/Claimant
Mr Akin John and Ms Keisal Peters for the Respondents/Defendants

.....
2014: July 24, December 3
.....

JUDGMENT

INTRODUCTORY AND BACKGROUND

- [1] This is an assessment of damages in a personal injury claim arising from a road traffic accident that occurred in the vicinity of the Bay View Car Park on the 20th August 2011. Liability was not contested, and on the 2nd July 2013, the Claimant obtained judgment for damages to be assessed. Pursuant to court order dated 4th June 2014, written submissions and authorities were filed. At the hearing on 24th July 2014, the written submissions were augmented by brief oral submissions.
- [2] The evidence before the court is contained in the affidavit of the Claimant filed on 7th May 2014, and the documents exhibited thereto; two witness statements of the Claimant filed on 17th June and 24th July 2014 and the documents exhibited thereto. Counsel for the Defendant indicated that they were not interested in cross-examining the Claimant; so the contents of those documents stand uncontroverted.

- [3] The Claimant is a Police Sargeant in the Royal Saint Vincent and the Grenadines Police Force. He is presently 44 years old. At the time of the accident he was 40 years of age.
- [4] On the 20th August 2011, the First Defendant Kevon Jessie-Don Anderson drove the Second Defendant's motor vehicle so negligently that it collided with the Claimant. As a result of the accident, the Claimant sustained injuries described in the Medical Report of Doctor Charles Woods as:
- (a) Laceration to left parietal scalp
 - (b) Deformity of distal left leg and left elbow
 - (c) Fractures to left tibia and fibula
 - (d) Fractures to left distal humerus and right thumb
- [5] The Claimant was admitted to the Ward at the Milton Cato Memorial Hospital on the day of the accident and commenced on antibiotics. He was taken to the operating theatre on 28th August, 2011 and external fixation of the fracture of the distal humerus was done, as well as closed reduction and casting of the fracture of the tibia/fibula. He was discharged on the 30th August 2011, and received follow up treatment at the outpatients clinic.
- [6] On 20th October 2011, the Claimant underwent another operation to remove the external fixator to his arm, and physiotherapy to the elbow was commenced. The cast to his leg was removed in January 2012 after it was ascertained that consolidation was satisfactory.
- [7] The Claimant visited Dr Woods on 13th February 2012. When examined, the Claimant was found to be ambulant, but was still undergoing therapy to strengthen his legs and to improve the function of his elbow. Dr Woods opined that the Claimant will have permanent stiffness of his left elbow due in part to the fracture sustained, and he is at risk of degenerative disease to the left ankle and knee as a result of trauma to the left leg.
- [8] The Claimant visited Dr Woods again on 15th March 2013 and the Doctor gave a report on him. In that Report dated 15th March 2013, Dr Woods stated that the Claimant had returned to work and that he was fully ambulant without walking aids. He noted, however that the Claimant's main complain was swelling and pain to his ankle with exertion as well as stiffness after periods of rest. The Doctor advised that these complaints are indicators of developing degenerative arthritis of the ankle joints which will be a lifelong complaint, but "hopefully" should not affect the Claimant's performance on the job. He noted that the Claimant also had some stiffness of the elbow due to the injury sustained but that he had full use of the left upper limb.
- [9] The Claimant was next assessed by Dr Woods on 24th July 2013. He reported that the Claimant was fully ambulant but complaining of stiffness and swelling of the ankle when on foot for prolonged periods, and when awaking in the morning, or after prolonged immobilization. Dr Woods further stated that Mr Woods was not able to meet all of the physical demands of his job as a police officer and is presently confined to office duties. I take it that this bit of information came from the Claimant and is therefore hearsay. On examination, the Claimant had some limitation of range of motion, but there was little swelling or

tenderness. His elbow remained limited in flexion and extension but is within functional range. Dr Woods was of the view that the Claimant had made good recovery from his injuries, but he may be incapacitated later in life by post traumatic arthritis of the ankle. He was also of the view that the Claimant will continue to have permanent stiffness of the elbow.

- [10] The Claimant was last assessed by Dr Woods on 1st July 2014, and the Doctor did his fourth and final report on the Claimant dated 15th July 2014. As in his third Report, Dr Woods found the Claimant to be fully ambulant. He reiterated that the Claimant had resumed duties as a police officer, adding that he was functioning well. He restated that the Claimant's main complaint was with his ankle with early morning pain and stiffness which improved with mobilization. He reported that there was some stiffness of the ankle but there was acceptable range of motion, minimal swelling, and no tenderness. He observed that the left elbow had some limitation of movement - 85 degrees flexion, 140 degrees extension, but well within functional range.
- [11] Dr Woods' concluding opinion was that the Claimant had made good recovery from his injuries, but was developing post traumatic arthritis which will require regular physical therapy, and that he will have permanent stiffness of the elbow.
- [12] At paragraph 13 of his Witness Statement dated 17th June 2014, the Claimant stated that during and after physiotherapy he experienced pain and swelling in his ankle; that when he returned to work on 12th November 2012, he quickly realized that it was nearly impossible for him to carry out all his duties that he used to carry out; so he was assigned desk duties.
- [13] At paragraph 21 of his Witness Statement the Claimant claims that no longer can he run about with his children and he does not see himself being put back into the field as he does not think that he would be able to pursue suspect without causing pain in his ankle and it may be difficult for him to apprehend a suspect as a result of the limitation and weakness in his left elbow. He also find it much more difficult to fire a gun.
- [14] The Claimant complains that as a result of his injuries, his sex life was affected in that from the date of the accident in August 2011 up until January 2012 when the cast was removed, he could not have sex with his wife. This, he said added greatly to his feeling of emasculation. He could not help out his wife with the children nor do any house work; nor could he play with his two minor sons.

ISSUE

- [15] The main issue for determination is what quantum of special and general damages should the Claimant recover?

SPECIAL DAMAGES

- [16] It is trite law that special damages represent the exact amount of money which the claimant has spent or lost as a result of the injury. Lord Goddard stated the principle in the case of **British Transport v. Gourley** [1955] 3 All ER 803 in this way:

"In an action for personal injuries, the damages are always divided into two main heads. First, there is what is referred to as special damages which have to be pleaded and proved. This consists of out of pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation ... The basic principle, so far as loss of earnings and out of pocket expenses are concerned, is that the injured person should be placed in the same financial position so far as can be done by an award of money as he would have been had the accident not happened"

- [17] That principle was restated by Haynes, J in the Guyanese case of **Heerallal v. Hack Bros. (Construction) Co Ltd. (1977) 25 WIR 117 (Court of Appeal of Guyana).**

(See also **Ilkiv v Samuels, (1963) 2 All ER 879**)

- [18] In his Statement of Claim, the Claimant pleaded special damages in the amount of \$105.00 for two Medical Certificates at \$50.00 each and \$5.00 for the cost of the "Minutes of Adjudication" from the Magistrate's Court. A receipt for \$50.00 was annexed to the Statement of Claim.
- [19] That said, it is apparent from the record that since the filing of the Statement of Claim, the Claimant had incurred additional costs of \$160.00 in respect of further Medical Reports. Notwithstanding this fact, the Statement of Claim has not been amended to reflect the updated out of pocket expenses. Normally, where special damages are continuing, that fact is pleaded, thereby laying the foundation for a possible application to amend the Statement of Claim in the Particulars of Special Damages to include expenses incurred after filing.
- [20] Essentially, the Claimant has, in his First and Second Witness statements updated his special damages claim from \$105.00 to \$210.00 and has provided receipts amounting to \$210.00 for Medical Reports: No Receipt has been provided for the Minutes of Adjudication.
- [21] Receipt dated 13th February 2012 is for the amount of \$50.00 "for Medical Report". The receipt number is illegible.
- [22] Receipt numbered 4039 dated 15th March 2013 is for the amount of \$60.00 "for Medical Report".
- [23] Receipt numbered 4074 dated 15th July 2014 is for \$100.00 "for Medical Report".
- [24] No Receipt was tendered for the Medical Report dated 24th July 2013 and the Claimant offered no explanation for its absence.
- [25] Counsel for the Defendants in their written submissions have correctly pointed to discrepancies and inconsistencies in the special damages claimed, but they have made no serious challenge thereto. In any event, they led no evidence on the issue of special damages and thus, I am not of the view that they can

offer any challenge at this point and time merely by way of their written submissions. The fact is that four Medical Reports were tendered, but receipts presented for only three of them, and both parties relied upon, and referred to each of them in their submissions. In relation to the third Medical Report dated 24th July 2013, for which no receipt has been tendered, nominal damages may be awarded on the authority of **Greer v Alston's Engineering Sales and Services Ltd**, [2003] UKPC 46 where Sir Andrew Leggatt who delivered the opinion of the Court, quoted with approval from **McGregor on Damages**, 13th Edition, paragraph 295:

" Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss. In the present case the problem is simply one of proof, not of absence of loss, but of absence of evidence of the amount of loss."

[26] At paragraph 9 of the Privy Council's opinion, Sir Andrew Leggatt said that it is the duty of the court to recognise the loss by an award that is not out of scale.

[27] Applying the principle enunciated in **Greer**, I award the Claimant the sum of \$50.00 in respect of the Medical Report dated 24th July 2013, and \$210.00 in respect of the Receipts tendered for the other three Reports. These total \$260.00 as special damages for Medical Reports provided by Dr Charles Woods.

GENERAL DAMAGES

[28] The factors to be taken into account in personal injury cases are enumerated in the case of **Cornelliac v St Louis** (1965) 7 WIR , 491. These include (1) the nature and extent of the injuries sustained; (2) the nature and gravity of the resulting physical disability; (3) the pain and suffering which had been endured; (4) the loss of amenities suffered; (5) and (6) the extent to which, consequently the injured person's pecuniary prospects have been affected.

[29] I have already discussed the first two heads above. I go on to discuss the pain and suffering and loss of amenities.

Pain and suffering and loss of amenities

[30] In **CCAA Ltd v Julius Jeffrey**, St Vincent Civil Appeal No 10 of 2003. Gordon J.A quoted Lord Hope of Craighead in **Wells v Wells** as saying;

"The amount of the award to be made for pain and suffering and 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 comparable cases as represents the court's best estimates of the plaintiff's general damages."

[31] Counsel for the Claimant have suggested a figure of \$150,000 for pain and suffering and loss of amenities. They cited three cases from the OECS to assist and guide the court:

1. **Sherma Mathurin v Rain Forest Sky Rides Ltd**, SLUHCV/0551 wherein the High Court of St Lucia in the year 2010 awarded the 26 years old Claimant \$150,000 for pain and suffering and loss of amenity for a displaced intra-articular open fracture of the low end of the right tibia (the bigger of the two leg bones, extending into the ankle joint) with a fracture of the fibular (the smaller of the two leg bones); multiple grazes and bruises to the forehead and right upper limb. She had to give up her job as tour guide for the job of a cashier.
2. **Gerald Khoury v Keithley George and Francis trading Agency Limited** ANUHCV 1999/0249, wherein the High Court in Antigua in the year 2004 awarded the 51 years old Claimant \$120,000 for pain and suffering and loss of amenities. His principle injury was a severe deformity of the left leg and ankle with crepitation and abnormal mobility. He received initial treatment in Antigua where he spent four days at Holberton Hospital where closed reduction of the fracture was attempted. He was then hospitalised for ten days at a hospital in the USA where he underwent further surgical procedures, namely open reduction and internal fixation whereby two metal plates were put in his ankle and fixed by 14 screws. He wore a cast for four week she developed osteoarthritis of the ankle due to the injury. His mobility was severely restricted as he could not play lawn tennis, or do any exercise which involves landing and jumping. He had difficulty getting in and out of his car, and will need therapy for the rest of his life.
3. **Ronald Fraser v Joe Dalrimple**, ANUHCV2004/0513 wherein the High Court of Antigua and Barbuda in the year 2010 awarded the 51 years old Claimant \$85,000 for pain and suffering and \$65,000 for loss of amenities for a severely comminuted fracture of left ankle and lower 1/3 of leg; fractures of the left medial malleous of left tibia; a severely comminuted fracture of the lower end tibia; lateral dislocation of left ankle/tibio tala

dislocation with lateral shift of talus with ankle diastases; severely contaminated compound wound with neuro-vascular compromise.

[32] Counsel for the Defendants on the other hand suggested a figure for pain and suffering and loss of amenities "ranging between \$60,000 or \$70,000". This suggestion came after Counsel had carried out a comparative analysis of the injuries and awards in the three cases cited on behalf of the Claimant and the cases cited for the Defendant. The cases cited by Counsel for the Defendant were as follows:

1. **Marcel Fevrier et al v Bruno Canchan et al**, St Lucia Civil Suit No 313 of 1989, wherein the High Court in the year 2002 awarded the First named Claimant \$50,000 who had sustained a six inch laceration to the outer aspect of his right leg; a comminuted fracture of the left tibia and fibula; fracture dislocations of the metacarpals and metatarsal joints in both feet. He underwent surgical procedure for reduction and K wire fixation of the fractures and dislocation of his feet. The fractured tibia and fibula were manipulated, reduced and immobilized in a plaster cast and the First Claimant was incapacitated for about six months. the injuries in the feet resulted in chronic pain and produced permanent disability of about 2%.
2. **Laura Marrocco v the Attorney General of Antigua and Barbuda**, ANUHCV1997/0240, wherein the High Court of Antigua and Barbuda awarded the Claimant \$50,000 for pain and suffering and loss of amenities in respect of fracture to the intra-articular right upper end tibia and fracture of the right distal radius and distal ulna. She was hospitalized and eventually transferred to a rehabilitation centre for two and a half months to improve and strengthen the function of her arm and leg. During the rehab she could bear no weight on her right side. She had to be fitted with a hinged knee brace that was uncomfortable and painful. After being discharged, she used a walker for six months. Because of the injuries, she could no longer perform certain activities for any length of time without experiencing pain and discomfort.
3. **Prescott Rambally's Funeral Parlour Limited et al**, SLUHCV2009/0359, wherein the High Court of St Lucia awarded the Claimant \$65,000.00 for pain and suffering and loss of amenities in respect of chest pain, hand and ankle injury, displaced medial malleolus fracture, fracture of the left knee, partial pneumothorax right lung. The Claimant had to undergo surgery using plates, screws and pins to fix the right ankle and heel.

The award for pain and suffering and loss of amenities

[33] All of the Medical Reports speak to the pain and suffering experienced by the Claimant. The Claimant also in his witness statements spoke of the pains he had endured and continue to endure, and this was also addressed by the Claimant's Counsel in the written submissions advanced. I entertain no doubt that the Claimant experienced severe pain immediately after the accident and after each surgical procedure and during physiotherapy. I accept that even now he continues to be in pain. He is however not disabled. He

has an impairment which restricts him in his occupational demands as a police officer. But he continues to be a Police Officer albeit in a sedentary position. I accept too, that for at least four weeks, the Claimant's social life had been curtailed. So was his sex life., although it was not indicated in the Medial Reports. I am also mindful of Dr Woods' last two Reports stating that the Claimant had returned to work, was functioning well; had become fully ambulant, and had made good recovery.

[34] Neither Counsel referred me to any case from this jurisdiction to guide the court and gauge the award for pain and suffering and loss of amenities. I am required firstly, to take guidance from comparable awards for comparable injuries in this jurisdiction, and other jurisdictions, if necessary, with similar social and economic conditions to those prevailing in St Vincent and the Grenadines. With that in mind, I find the following St Vincent cases to be useful guides/yardsticks. though the nature and effect of the injuries are not on all fours with the instant case, and a considerable period of time has elapsed between the awards:

1. **Louai George v Manal George et al**, Claim No 206 of 2001, wherein Master Cottle in April 2005 awarded the 34 year old Claimant (who was 28 at time of accident) \$80,000 for pain and suffering and \$40,000 for loss of amenities in respect of the following injuries:

- (1) Multiple fractures to the left foot
- (2) Multiple fractures to the left neck femur
- (3) Left supra condylar fracture of left humerus
- (4) Fractured medial condylar
- (5) Fractured troclimiter resulting in equinous deformity of the left foot and ankle
- (6) Left arm deformed at elbow

The severity of the injury forced the Claimant to seek surgical intervention abroad as the facilities were not available in St Vincent and the Grenadines. In January 2004, five years after the accident (which occurred in 1999), the Defendants commissioned a Doctor to medically examine the Claimant. The Doctor's findings were as follows:

- (1) Permanent shortening of the left lower limb due to ipsilateral fracture of the left trochanter and left tibia with fixed equinous deformity and pes cavos deformity. Further surgery would not be likely to improve this.
- (2) The fracture of the left hip had healed completely but a possibility exists that he may develop early osteo arthritis.
- (3) The fractures of the left leg which had malunited and had to be corrected with with internal fixation was prone to osteomyelitis at any time;

- (4) There was evidence of compensatory mechanical wear and tear on the contra lateral joints. This may lead to future replacement arthroplasty;
- (5) The left elbow was slightly malunited and already show signs of osteo arthritis.

- 2. **Kendall Fredericks v Carlton Cunningham**, Claim No 475 of 2002 the 12 year old Claimant sustained a crush injury to his leg. He underwent multiple surgeries. The Medical Report disclosed that the Claimant was at high risk of precocious development of osteoarthritis of the knee and ankle. The Court in the year 2009 awarded \$150,000 for pain and suffering and loss of amenities.
- 2. **Eddeion Ballantyne v Donald John Claim No 277 of 1993** also affords reasonable guidance for an award of general damages for pain and suffering. The Claimant, a 27 year old bartender at Young Island Hotel, was struck by a motor vehicle and pinned against a bank. He sustained severe injuries including fractures to his ribs, but his most severe injury was to his left leg which was crushed. Surgical attempts failed, and the leg eventually had to be amputated above the knee. Cottle J, in the year 2007, awarded \$90,000 to the Claimant for pain and suffering and \$40,000 for loss of amenities.

[35] Undoubtedly, **Louai George** case bears the closest similarity to the present case, although the injuries in that case were far more severe than the injuries in the instant case, and over nine years have elapsed since that award was made.

[36] Pain and suffering are very subjective matters. An award made may either be too high or too low depending on future developments. However, the court is required to do the best it can and award a figure that it thinks is reasonable in the circumstances.

[37] Taking into account the age of the Claimant, the nature and extent of the injuries sustained by him, the pain and suffering endured by him, his loss of amenities, and upon considering awards in the cases cited by Counsel for the parties, and those referred to by the court, particularly the **Louai George** case, and the considerable amount of time that has elapsed between the awards, but considering, particularly, the fact that the injuries sustained by the Claimant in the instant case were far less severe than the injuries sustained by the Claimant in the Lourage case) I consider that an award of \$80,000 is reasonable for the Claimant's pain and suffering and \$30,000 for loss of amenities.

NURSING CARE

- [38] In his Statement of Claim, the Claimant states that during the five months of wearing the cast, he was reliant upon his family for assistance as he was unable to use his left arm. In paragraph 10 of his supporting affidavit filed 7th May 2014, he states that from 20th August 2011 to January 2012 his mobility and independence were severely limited, so he could not perform basic tasks for himself and had to rely on family and friends to take care of him. These averments were repeated in paragraph 6 of the Claimant's First Witness Statement filed on 17th June 2014 and addressed in the submissions put forward on behalf of the Claimant. There is no other evidence apart from the Claimant's mere say so that he received nursing care from his wife and other family members, and there has been no challenge to an award being given in this regard. I am content to accept that given the nature of his injuries, the Claimant would have needed help to do certain things after his discharge from the hospital and during the time his elbow and ankle were in casts.
- [39] Learned Counsel for the Claimant in her submissions suggests the sum \$5000.00 for nursing care. She seems to be treating this head as general damages. It appears from the learning that nursing care is treated as a specie of special damages, but sometimes overlaps with non-pecuniary loss.
- [40] It is the law that if a wife or mother or other member of the family undertakes to provide nursing care, an allowance will be made for the fair value of the services rendered because they are services made necessary by the injury, although the Claimant has made no agreement to pay for them (See: *Cunningham v Harrison* [1973] QB 942; [1973] 3 All ER 463.
- [41] Based on the principle enunciated in *Cunningham*, the court is minded to make an award. The question is what quantum would that be. Counsel for the Claimant seemed to have simply plucked a figure from the air. However, I am content to adopt the approach taken by the court in *Carter v. St Clare Latham Concrete and Aggregates Limited*, Claim No 524 of 2005 (St Vincent and the Grenadines) wherein Master Cottle, as he then was,, allowed \$300.00 per month for post accident care. Updating that award to today's dollars, I award the Claimant the sum of \$2500.00 (being \$500.00 per month for five months) for nursing care.

LOSS OF FUTURE EARNING CAPACITY/HANDICAP ON THE LABOUR MARKET

- [42] Learned counsel for the Claimant submitted that given the contents of the Medical Reports dated 24th July 2013, and 15th July 2014, wherein Dr Woods stated that the Claimant may be incapacitated later in life by post traumatic arthritis, and stated as a fact that "Mr Billiny is not able to meet all the physical demands of his job as a police officer and so presently is mainly confined to office duty", it is apparent that the Claimant not only has been affected in his employment, but is likely to be increasingly adversely affected in the performance of his job in the future. It was Counsel's further submission that there is a real risk that the Claimant will lose his present job at some time before the end of his estimated working life which is 55 years for police officers. Counsel has further submitted that arthritis will affect the Claimant within the next ten years, and this will accordingly shorten his working life.. Counsel next submitted that if the Claimant loses his employment, this would leave him at a disadvantage on the labour market. Using a multiplicand of

\$18000 per annum and a multiplier of 3 years, Counsel for the Claimant has further suggested that the Claimant should be awarded the sum of \$54,000.00 for the risk of being forced to take early retirement and unable to find an "equally good job"

[43] Counsel relied on two cases in support of her submissions for an award under this head of damage: **Moeliker v Reyolle** [197] 1 WLR 122 and **Karen John v David Dabique**, SVGHCV2009/359

[44] Counsel for the Defendant submitted that no award should be made for handicap on the labour market. Counsel submitted that the cases cited by the Claimant's Counsel say that there has to be evidence, and in the case at bar, the medical evidence does not reveal any risk of the Claimant losing his employment, or that his ability to perform his job was impaired. Counsel pointed to the last Medical Report of Dr Woods wherein he stated that the Claimant had resumed duties and was functioning well.

[45] In reply, Counsel for the Claimant pointed to the same Report wherein Dr Woods stated that the Claimant was developing post traumatic arthritis which will require regular physical therapy, and that he will have permanent stiffness of the elbow.

[46] In **Moeliker v. A. Reyolle & Co. Ltd.** [1977] 1 All E.R. 9, Brown LJ considered the principles to be applied in making an award of damages for loss of earning capacity. The headnote to that case reads as follows:

"In awarding damages for personal injury in a case where the plaintiff is still in employment at the date of the trial, the court should only make an award for loss of earning capacity if there is a substantial or real, and not merely fanciful, risk that the plaintiff will lose his present employment at some time before the estimated end of his working life. If there is such a risk, the court must, in considering the appropriate award, assess and quantify the present value of the risk of the financial damage the plaintiff will suffer if the risk materialises, having regard to the degree of the risk, the time when it may materialise, and the factors, both favourable and unfavourable which in a particular case, will or may affect the plaintiff's chances of getting a job at all or an equally well paid job if the risk should materialise. No mathematical calculation is possible in assessing and quantifying the risk in damages. If, however, the risk of the plaintiff losing his existing job, or if his being unable to obtain another job or an equally good job, or both, are only slight, a low award measured in hundreds of pounds, will be appropriate."

[47] To the same effect is the opinion of Lloyd L.J. in **Foster v Tyne and Wear County Council** (1986) 1 All ER,567 where he said at page 570:

"In each case the trial judge has to do his best to assess the plaintiff's handicap, as an existing liability, by reference to what may happen in the future. As has been said so

often, that is a matter of speculation. It is necessarily a matter of weighing up risks and chances in all the circumstances of a particular case. The very fact that the approach must necessarily be so speculative means, of course, the occasions on which this court will feel justified in interfering with a judge's assessment will be few and far between for there is no established range or standard against which to measure the judge's award."

- [48] The court is very much aware that the Claimant is still employed as a police officer without any loss of earnings. The Court is also very much aware that there is nothing in the Medical Reports or the Affidavits/Witness Statements that point to the possibility of the Claimant not working up to the normal retirement age. So there is no evidence upon which I can make a finding that the Claimant is at risk of losing his job as a police officer, and be thrown on the job market, unable to find a job, or an equally good paying job. Indeed, the medical reports on the Claimant did not disclose that the Claimant was in danger of losing his job and would in any other way be at a disadvantage.
- [49] That said, the truth is that we do not know what the fate of the Claimant would be. His future must be taken to be fraught with uncertainty as a result of his injuries.
- [50] The evidence which I accept nonetheless is that the Claimant has made good recovery and has returned to work, but not to his pre-accident duties. In my judgment, the mere fact that the Claimant has been moved from working in the field to doing sedentary office work is indicative of his diminished work capacity. In my opinion, this puts the matter beyond mere speculation. Impairment of working capacity ultimately affects prospective earnings. I accept that the Claimant's left elbow remains troublesome, in that flexion is limited; that he will have permanent stiffness of the elbow, and that he may be incapacitated later in life by post traumatic arthritis of the ankle. I am of the view that although his job is not in jeopardy at the moment, based on his prognosis, his injuries may at some time in the future cause him some financial disadvantage and handicap in the labour market after he retires in the next twelve years at age 55. His normal working life is put at 65. I do not consider that the Claimant will lose his job before he reaches the retirement age of 55, but that there is a slight chance that after he retires he will be unable to find a job or an equally good paying job. I am called upon to assess the present value of the future risk and award the claimant an amount which I think is appropriate. I think it would be just and reasonable to award the Claimant the sum of **\$30,000** based on the reasoning in **Moeliker v Reyolle**, and **Foster v Tyne & Wear**.

FUTURE MEDICAL EXPENSES

- [51] The Claimant's Counsel asked the court to award Claimant the sum of \$5000.00 for future medical care. They led no evidence on quantum, and seemed to have simply plucked a figure from thin air.
- [52] In his Medical Report dated 15th July 2014, Dr Woods noted that the Claimant will require regular physical therapy for the developing post traumatic arthritis of his ankle. What the Doctor did not specify was how many times per year and at what cost per session. In this regard, Claimant's Counsel was not helpful either

as he provided no estimate of the costs of physiotherapy in St Vincent and the Grenadines and thus, the prospective loss remains unquantified. In previous assessments that I have done, Counsel have indicated that physiotherapy is provided at the Milton Cato Memorial Hospital, apparently free of cost, or at minimal cost, and that physiotherapy in the private sector ranges from Thirty to Thirty Five Dollars per session. (See **Tishelle Browne v Lennox Israel et al**, Claim No 80 of 2006 [St Vincent and the Grenadines].

[53] In **Greer's case**, Sir Andrew Leggatt said that even if no evidence on quantum is led, and the prospective loss therefore remains unquantified, it is the duty of the court to recognize the claim by an award that is not out of scale." (emphasis added).

[54] Taking guidance from **Greer's case**, I would use an annual sum of \$500.00, apply a multiplier of 10 and award the Claimant \$5000.00 full future medical and physical therapy related expenses.

COSTS

[55] The Claimant is entitled to costs as prescribed under CPR 65.5 Appendix C as amended and Appendix B.

INTEREST

[56] Interest is usually awarded to a Claimant in a personal injuries case for being kept out of money, which should have been paid to him or her. The court will normally award interest on the sum awarded for general damages for pain and suffering and loss of amenities. Interest on this sum should be from the date of service of the claim to the date of assessment at the rate payable on money in court placed on short-term investment.

[57] No interest is to be awarded before judgment on sums granted for pecuniary loss or loss of earning capacity. The Claimant would be entitled to post judgment interest on the full amount awarded at the rate of six per cent per annum under the Judgments Act.

[58] **SUMMARY OF THE AWARDS**

1.	Special damages for Medical Reports	\$	260.00
2.	General damages		
	(a) Pain and suffering	\$	80,000.00
	(b) Loss of amenities	\$	30,000.00
	(c) Future Medical Expenses	\$	5,000.00

(d) Loss of earning capacity \$ 30,000.00
(e) Nursing care \$ 2,500.00

Total \$ 147,760.00

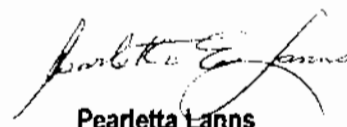
CONCLUSION

[59] It is hereby ordered and adjudged that the Defendants Kevon Jessie-Don Anderson and Leonet Anderson do pay to the Claimant Cleos Billingsy damages assessed as follows:

- (I) Special damages in the amount of \$260.00 with interest thereon at the rate of 3 per cent per annum from the date of the accident, to the date of judgment on assessment.
- (II) General damages for pain and suffering and loss of amenities in the sum of \$110,00 with interest thereon at the rate of six per cent per annum from the date of service of the claim to the date of judgment on assessment of damages
- (III) Loss of future earning capacity in the amount of \$30,000.00. No interest applicable.
- (IV) Future Medical Expenses in the amount of \$5000.00. No interest applicable
- (V) Costs as prescribed under CPR 65.5 Appendix C as amended and Appendix B.

[60] The judgment attracts interest at the statutory rate of six per cent per annum from the date of the delivery of this judgment to the date of full and final payment.

[61] I am grateful to Learned Counsel on each side for their helpful written and oral submissions and authorities.



Pearlitta Lanns

Master