

EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT & THE GRENDAINES

IN THE HIGH COURT OF JUSTICE (CIVIL)

Claim Number: SVGHCV2012/0338

Between

**Shonnell Delicia**

**Claimant**

**and**

**Adolphus Matthews**

**Marcellus Matthews**

**Defendants**

**BEFORE: AGNES ACTIE Master**

**APPEARANCES:**

Mr. Jemalie John with Ms Patricia Marks-Minors for the claimant Mr Duane Daniel for the first defendant

1st Defendant present

**2016 March 22 RULING ON ASSESSMENT OF DAMAGES**

**2017: February 3**

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1. On 4th December 2009, the claimant was a fare paying passenger in a minibus owned by the first defendant and driven by the second defendant. The claimant avers that the second named defendant negligently caused the vehicle to collide with a heap of sand and went over an embankment causing injury to the The claimant was seventeen (17) years old at the time of the accident.
2. On 6th May 2014, Judgment in default of acknowledgment of service was entered against the second named defendant with damages to be

### **General Damages**

3. General damages are usually determined taking into consideration the principles set out by Wooding CJ in the seminal case of **Cornilliac v St Louis**<sup>1</sup> namely (1) the nature and extent of injuries suffered; (2) Nature and gravity of the resulting physical disability; (3) Pain and suffering endured; (4) Loss of Amenities;(S) extent to which the claimant's pecuniary prospects have been

### **The nature and extent of injuries suffered and resulting disability**

4. The nature and extent of the claimant's injuries were outlined in the medical report of Charles D. Woods dated 27th August 2012. The medical report states that the claimant was admitted to the Milton Cato Memorial Hospital on the date of the accident with a deformed left lower extremity with associated wound. Her leg was placed in traction and she underwent open reduction and plating of the fractured femur on the 10th December 2009. The report states that the claimant was discharged on 18th December 2009, without complications and was to follow up in the orthopedic clinic to commence therapy. Dr. Woods stated that the claimant had made a full recovery but would still have some intermittent knee discomfort and would be at risk of developing future degenerative disease of the knee and hip as a direct result of the trauma sustained to the leg.

### **Nature and gravity of resulting Disability**

5. The claimant avers that she has a large visible scar on her left leg and is conscious of the scar which has affected her appearance and The claimant avers that she now has to wear certain clothing to cover the scar to avoid exposure. The claimant further avers that she is emotionally depressed and worried about the possibility of the risk of future degenerative disease of the knee and hip. She states that her mobility has been restricted as a result of the injuries as a steel plate in her left leg prevents her from doing her regular chores as she walks with a limp and continues to endure pain on a regular basis.

### **Loss of future earning capacity**

6. The claimant avers that she migrated to the USA in July 2014 with the intention of joining the She avers that she has to undergo further evaluation as an added requirement because of the steel plate lodged in her left leg to ensure that she will not be a liability to the

<sup>1</sup> Comilliac v St Louis (1965) 7 WIR 491.

military. The claimant avers that the chances of fulfilling her long held dream may now be slim as a result of the injuries and the resulting restrictions on her mobility.

### **Pain and suffering and loss of amenities**

7. The claimant avers that she was unable to sit her CXC exams as she had difficulty walking due to the persistent She avers that she suffered immense pain as she was conscious at the time of the accident and post-surgery. She avers that the recovery was a slow process as it took quite some

time to adjust to the steel plates in her left leg and still continues to experience pain on the site of the wound with severe cramping..

8. The claimant avers that she was 17 at the time of the accident and in robust health enjoying and playing netball and participating in road relay sporting She avers that it is no longer possible to enjoy such amenities as her mobility is limited as she is unable to run and walks with a limp.
9. The claimant claims the sum of \$220,000.00 as general damages for pain and suffering and loss of amenities and presented authorities in
10. Counsel for the defendants in response contends that the award sought and the authorities cited are out of scale when compared to awards made in similar type Counsel avers that the claimant relies on a medical report dated almost 3 years after the accident which does not support the claimant's alleged prognosis. The defendant states that the claimant was seventeen (17) years old and unemployed at the time of the accident. Counsel further contends that the claimant's averment that the accident has diminished her ability to obtain gainful employment is uncorroborated by medical evidence as the medical report states that the claimant had made full recovery.
11. Both parties cited authorities in support to influence the court in making an award under this

2 SVGHVCV 2013/0096

The claimant referred the court to several authorities in support of the Of most significance is the case of **Cleos Billiny v Kevon Jessie- Don Anderson et al 2** delivered on 3rdDecember 2014 emanating from this jurisdiction. In that case, the claimant suffered laceration to the left parietal scalp; deformity of distal left leg and left elbow; fractures to left tibia and fibula; fractures to left distal humerus and right thumb. The claimant was admitted to hospital for 10 days and underwent surgery with external fixation of the fracture and close reduction and casting of the fracture tibia/fibula. He was readmitted and underwent further operation to remove the external fixator to his arm and physiotherapy commenced. The cast to his leg was removed approximately 5 months after the surgery. The claimant continued 'therapy to strengthen his legs and to improve the function of his elbow. The claimant was diagnosed with permanent stiffness in his left elbow and at risk of degenerative disease to the left ankle and knee as a result of the trauma to his left leg. The claimant continued to suffer pain and stiffness in ankle with limitation of movement in in his left elbow. The court in 2014, awarded the sum of \$80,000.00 for pain and suffering and \$30,000.00 for loss of amenities.

13. The defendants also cited authorities to assist the court to make a comparative award and relies on the decision of **Floyd Pompey v Cqsley Toney 3** where the court in 2008 made an award in the sum of \$20,000.00 for somewhat similar type
14. An award of damages for pain and suffering and loss of amenities is incapable of exact estimation and an assessment must necessarily be a matter of degree based on the facts of each case. The court must strive for consistency by using comparative cases tailored to the specific facts of the individual The task of converting the one into the other to arrive at an award of general damages is necessarily artificial, and involves a value judgment. Lord Hope of Craighead in **Wells v Wells4** states:

"The amount of the award to be made for pain, 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 similar awards in comparable cases as represents the Court's basic estimate of the plaintiffs damage".

15. In an effort to maintain consistency and having regards to awards made in this jurisdiction especially the award made in **Cleos Billiny v Kevon Jessie- Don Anderson**. The injuries were

more severe with an extended recovery period and permanent resulting I also note the decision in **Aveline O'Ggarro v Neil Ross**<sup>5</sup> from this jurisdiction where the

4 [1998] 3 All ER 4813SVGHCV 2006/0395

5 SVGHCV 2004 /329

claimant in a vehicle accident suffered a dislocated right hip and was hospitalized for one month. She rehabilitated on crutches and had to walk with the assistance of a cane. The court in 2012 awarded the sum of \$120,000.00 for pain and suffering and loss of amenities.

16. I take into consideration that the claimant in the instant case was 17 at the time of the accident and It was her evidence during her examination via a skype conference call that she was unemployed. She has not provided any supporting evidence of her attempts to join the army and her assertion of being disadvantaged to join the army as a result of her injury. I accept that the steel frame will cause discomfort but I am not convinced that the claimant is totally handicap to prevent her from furthering an alternative career or other form of employment. Taking all into consideration I am of the view that an award in the sum of \$75,000.00 for general damages with \$60,000.00 for pain and suffering and \$15,000.00 for loss of amenities is suitable in the circumstances.

#### **Future Medical Expenses**

17. The claimant seeks future medical expenses in the sum of \$30,000.00.. The claimant relies on the opinion of Dr Woods in the medical report where he stated that the claimant will more than likely be required to seek future medical care for degenerative disease of the knee and The claimant has not furnished any evidence to substantiate the amount claimed. Accordingly, in the absence of proof of an estimate cost for future medical expenses, I will allow a nominal sum of \$2000.00

#### **Nursing care**

18. The claimant seeks compensation for nursing care in the sum of \$5000.00. The clamant avers that she was unable to perform her usual household chores and relied on her family members for Her averment is not buttressed by any evidence such as witness statements or affidavits of the persons who assisted during the recovery period. Accordingly, I award a nominal sum of \$500.00

#### **Special Damages**

19. The amount of \$570.00 claimed as special damages is not disputed by the defendant and is accordingly

#### **ORDER**

20. In summary, it is ordered that the defendants shall pay the claimant the following awards:

1. Special Damages in the sum of \$570.00 with interest at the rate of 3% per annum from the date of the accident, to the date of
2. General damages for pain and suffering and loss of amenities in the sum of

\$75,000.00 with interest at the rate of 6% from the date of service of the claim to the date of assessment of damages.

3. Nursing care in the sum of \$500.00

4. Cost of future medical expenses in the sum of \$2000.00
5. Prescribed costs on the global sum in accordance with CPR 5

21. I wish to apologize to the parties for the delay in delivering this I thank counsel for their very helpful submissions.

**Agnes Actie**

**Master**