

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO: SLUHCV 2015/0347

BETWEEN

Lazarus Kenny Phillip

Claimant

and

Linton Martyr
Henry Roserie
Gemal Roserie

Defendants

Appearances:

Mr. Tiris Fredeick for the Claimant

Mrs. Maureen John-Xavier for the Defendant

2016: December 12.

2017: April 24

JUDGEMENT

1. **ACTIE, M.:** On 27th April 2013, the claimant was a passenger on a motor vehicle owned by the second and third defendants and driven by the first defendant. It is the evidence that the first named defendant fell asleep at the wheels, the vehicle veered off the pitch surface of the road and came into contact with a bridge causing injuries to the claimant.
2. The claimant was hospitalized for 7 days. Dr. Joachim Jimie in a medical report, dated 23rd January 2014 detailed the claimant's injuries as neck pain, 3cm laceration over the left eyelid with a right sided lip deviation along with:
 1. Poly-trauma secondary to motor vehicle accident
 2. C-spine injury

3. Brain contusion
4. Ethanol intoxication

The claimant was reassessed on the third day of admittance with some swelling to the right side of his neck and was diagnosed with intramuscular hematoma. A further x-ray revealed a clavicular fracture.

3. Dr. Sydney, Neurosurgeon in a medical report dated 17th February, 2015, stated that the claimant was presented to the outpatient clinic in November 2014 complaining of dizziness following the accident. He complained of unstable gait and had to be occasionally assisted by his wife to keep him from falling. Dr. Sydney was of the view that that the claimant's symptoms were related to the traumatic accident. A follow up visit in January 2015 revealed no significant improvement with complaints of intermittent headache. Dr. Sydney, in a further report dated December 7, 2016, states that the claimant complained of continuous intermittent dizziness; forgetfulness, slowness and inability to work. The claimant was observed as having a discrete left facio-brachia-crural paresis with left Oppenheim's sign positive. He was diagnosed with Post concussive and Post contusive syndrome with recommendation to follow up with a psychiatrist.
4. The claimant underwent a series of clinical psychotherapeutic assessments and presented a report on his latest assessment on 25th November 2016 from Dr. Franklyn Bray, Clinical Psychotherapist. The report states the claimant did not present any symptoms significant to Post Traumatic Stress or Depression consistent with the accident. However, his disappointment over his inability to conduct his life in a gainful manner was consistent with features of adjustment disorder when experiencing grief and/or significant disappointment negatively impacting one's normal functioning which leads to mood disorder. Dr. Bray recommended Psychotherapy and assessment for continued treatment with anti-depressants.

Special Damages

5. The parties agreed to special damages claimed and proved for medical expenses in the sum \$5,016.75

Loss of Earnings

6. The claimant avers that he has been unable to work in excess of three years since the accident. He avers that he has been a carpenter and joiner for over thirty(30) years and was in employment at the time of the accident. He provided a letter from his most recent employer, Trents Construction Ltd. The letter states that the claimant was employed as a carpenter and was paid \$15.00 per hour and a monthly minimum wage of \$2400.00 up until Friday 26, 2013 prior to the accident. The claimant claims for loss of earnings for 400 days (20 Months) x \$120.00 per day making a total of \$48,000.00.
7. The defendants challenged the amount claim on the ground that the evidence does not support the averments of continuous employment as a carpenter for 30 years. Counsel contends that a statement from NIC indicates that the claimant only paid NIC contributions for five(5) out of the thirty (30) years of his alleged employment as a carpenter. Counsel contends that the claimant's current salary as claimed would have attracted income tax for which the claimant failed to provide evidence of Income Tax returns Counsel avers that the claimant's employment was temporary and accordingly should not be compensated for the entire period claimed.
8. The court accepts the evidence that the claimant was in employment at the time of the accident. The lack of evidence of payment of NIC contributions or evidence of payment of income tax over the years does not conclusively infer that the claimant was unemployed. It is common knowledge that persons in permanent/intermittent employment sometime fail to contribute to NIC or pay income taxes.

9. In **Mitcham Black v The Attorney General of Saint Lucia**¹ Hariprasad-Charles J as she then was, referred to the test laid down by the Jamaica Court of Appeal in **Gravesandy v Moore**² which states:

“a plaintiff who seeks general damages for loss of earnings must show that there is a real or substantial risk that he may be disabled from continuing his present occupation and be thrown handicapped, on the labour market at some time before the estimated end of his working life. The risk in such a case will depend on the degree, nature, or severity of his injury and the prognosis of full recovery; and the evidence must be adduced as to these matters and also as to the length of the rest of his working life, the nature of his skills and the economic realities of his trade and location.”

10. I accept the medical evidence that the claimant, due to injuries, has been unable to obtain gainful employment since the accident. I also accept the claimant's wife evidence at the assessment where she stated that the claimant merely assists her in conducting menial tasks at her canteen. However, I accept that the compensation for the period claimed should be calculated on net amount taking into consideration 5% deductions for NIC contributions. Accordingly, the claimant is awarded the sum of \$48,000.00 - \$2400.00 = \$45,600.00.

General Damages

11. The claimant claims the sum of 120,000.00 as general damages for pain and suffering and loss of amenities.
12. General damages are usually determined taking into consideration the principles set out by Wooding CJ in the seminal case of **Cornilliac v St Louis**³ 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;(5) extent to which the claimant's pecuniary prospects have been affected.

¹ SLUHCV 2004/0502 delivered on 19th March 2007

² (1986) 40 WIR 222

³ Cornilliac v St Louis (1965) 7 WIR 491.

13. The claimant, in support for the award for general damages, referred the court to the decision in **Mercedes Delplesche v Samuel Emmanuel De Roche**⁴. The claimant was hospitalized for 4 days after she was knocked down by a vehicle. The claimant sustained trauma to the head and knee, abrasions to the face, laceration to the forehead, nose and lower lip and bleeding from left nostril. The claimant was awarded \$65,000.00 for pain and suffering and loss of amenity.
14. Counsel for the defendants referred the court to the Court of Appeal decision in **Wadadii Cats Limited v Francis Chapman et al** ⁵ where the claimant suffered shock; severe bruising of the head; severe pain in the neck and arm; bruising of the inner ear and post-concussion syndrome; paraesthesia- pins and needles in her right arm; numbness over the right thumb and forefinger; cervical spondylosis and mild degree of carpal tunnel syndrome. The Court of Appeal awarded the sum of \$120,000.00 for general damages. The defendants suggest an award for general damages in the range of \$40,000.00 to \$60,000.00 as appropriate compensation to the claimant at bar.
15. Counsel for the defendants also states that the claimant was contributory negligent as he was aware that the first defendant/driver was drinking alcohol immediately prior to the accident. Counsel further contends that the claimant was not wearing his seatbelt and was also intoxicated. Counsel was of the view that the possibility existed that had the claimant been awake, he could have alerted the first defendant to avoid him running off the road and colliding with the bridge.
16. Counsel for the claimant rejects the assertion that the claimant was contributory negligent as it is the evidence that the driver fell asleep while driving. Counsel contends that there is not any supporting evidence of intoxication. Counsel avers that parties stopped at Fond St Jacques for a drink and the driver was able to drive up to Anse la Raye without incident.

⁴ SVG HCV 2012/0014

⁵ ANU Civil Appeal n0 16 of 2004 delivered on 25th April 2005

17. Having reviewed the evidence, I am of the view that the issue of contributory negligence is unsustainable. The driver owed the claimant a duty of care. The fact that the claimant was intoxicated and asleep in the back seat at the time of the accident did not negate the driver's obligation to drive responsibly. The driver was under a duty to take the victim as he found him. The evidence does not lead to contributory negligence as averred by the defendants. The defendants have not convinced the court that the claimant acted unreasonably in the circumstances.
18. I take into consideration the medical evidence and the authorities cited and especially the resulting psychological effect on the claimant since the accident. I note that the injuries suffered in the **Wadadli Cats Limited** were more serious than the case at bar. However, I take into consideration that the award was made in 2005 and will accordingly award the sum of \$80,000.00 for pain and suffering and loss of amenities.

Future medical expense

19. The claimant seeks future medical expense in the sum of \$2400.00. The defendants contend that this is a claim under special damages and should not be allowed as it was not pleaded and proved. .
20. Special damages are out of pocket expenses capable of being proved at the time of filing the claim. The claimant is seeking compensation for future medical expenses post judgment. I accept the doctor's medical evidence both in his report and examination in chief that the claimant will require future psychological evaluations. Accordingly I allow a nominal sum of \$1500.00 for future medical expenses in the absence of the supporting evidence to prove an exact quantum under this head.

Order

21. In summary and for the foregoing reasons, the claimant is awarded the following:

- (1) Special damages in the sum of \$5,016.75 with interest at the rate of 3% from the date of the accident until the date of judgment and at the rate of 6% from the date of judgment until payment.
- (2) Loss of Earnings in the sum of \$45,600.00. with interest at the rate of 3% from the date of the accident until the date of judgment and at the rate of 6% from the date of judgment until payment.
- (3) General damages for pain and suffering and loss of amenities in the sum of \$80,000.00 with interest at the rate of 6% from the date of judgment until payment
- (4) Future medical care in the sum of \$1500.00 with interest at the rate of 6% from the date of judgment until payment
- (5) Prescribed costs on the global sum in accordance with CPR 65.5

BY THE COURT

REGISTRAR