

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

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

Claim No. ANUHCv2013/0051

Between:-

ALISHA RODNEY

Claimant

And

**WILLIAM AIRALL (since deceased) and
the Administrator General (appointed by
Order dated 8th April, 2016 to represent
the estate of WILLIAM AIRALL)**

Defendant

Before:

Master Yvette Wallace Ag.

Appearances:

Ms. C. Debra Burnette with Ms. Mandi Thomas and of Counsel for the Claimant

The Claimant represented by her father Mr. Atlee Rodney

Administrator General appointed to represent the deceased Defendant being absent

2017: March 8;

April 27

ASSESSMENT OF DAMAGES

- [1] **WALLACE, M [AG.]:** On the 7th July, 2012, the Claimant, then 22 years old, was walking on the Old Parham Road when she was struck by a vehicle driven by the Defendant. As a result of the impact the Claimant was injured. She was hospitalized for approximately 13 days. Her injuries were treated.

- [2] On the 23rd January 2013 the Claimant filed an action for damages for the injuries she sustained as a result of the accident. The issue of liability was determined on 3rd July 2014 when Judgment was entered against the Defendant with damages to be assessed. The Defendant is now deceased and is represented in these proceedings by the Administrator General.

SPECIAL DAMAGES

- [3] The rule is that special damages must be specially pleaded *and* proved. The Claimant itemised her special damages in her amended Statement of Claim filed on the 12th November 2013.

- [4] In the Claimant's witness statement she states as follows:

"My out of pocket expenses to date are as follows:

<i>Police Report</i>	<i>\$50.00</i>
<i>Medical Reports</i>	<i>\$219.00</i>
<i>Medical Care (MSJMC)</i>	<i>\$44,841.30</i>
<i>Physiotherapy</i>	<i>\$880.00</i>
<i>Loss of Earnings</i>	<i><u>\$3,200.00</u></i>
<i>Total</i>	<i><u>\$49,190.30</u></i>

Copies of the receipts evidencing the same are exhibited hereto and marked "A.R.3"

- [5] I am satisfied that special damages have been pleaded and have been proven in the amount of \$49,190.30. That sum is allowed.

GENERAL DAMAGES

- [6] The legal principles governing the assessment of general damages are well settled.¹ Consideration is to be given to the nature and extent of the injuries sustained; the nature and gravity of the resulting physical disability; the pain and suffering endured; the loss of amenities suffered; and the Claimant's pecuniary prospects have been affected.

Nature and Extent of Injuries Sustained

- [7] The injuries sustained by the Claimant as a result of the accident are verified in the Medical Report of Dr. T. Richards:

- Fracture of the Mid-Shaft of the Right Femur

¹ Cornilliac v St Louis (1965) 7 WIR 491

- Right leg externally rotated, with tenderness and swelling around the fracture site
- Abrasion on the Left Foot

[8] The Claimant injuries required medical intervention and underwent a procedure called "Open Reduction and Internal Fixation, with K-Nail Insertion" to her right femur under general anaesthesia.

Nature and Gravity of the Resulting Disability

[9] The Claimant states that as a result of the accident she was physically disabled for some time during which she required the care and assistance of her mother. She was required to use crutches to ambulate for many months.

[10] The Claimant's evidence is that she was required to undergo physiotherapy before and after she was discharged from hospital. She did physiotherapy until December 2012.

[11] In the medical report of November 2013 Dr. Richards stated that the Claimant's prognosis was good and she had recovered well at her last examination in August 2013. It may be that the Claimant will have to undergo another surgery to remove the implanted K-Nail.

Pain and Suffering Endured and Loss of Amenities Suffered

[12] The Medical Report of the 29th July 2012 states that the Claimant was fully conscious and oriented, but complained of pain to the right thigh.

[13] The Claimant evidence is that she continued to experience pain after surgery and during physiotherapy done whilst she was still a patient at the hospital. Further, the physiotherapy continued to be painful even when she went as an outpatient.

[14] She states that she was a member of the gym and had a love for health and fitness. Consequent upon her injury, she is unable attend and has been advised not to engage in high impact activities, which means her attendance at the gym must be curtailed. She has provided evidence of her gym membership.

[15] The Claimant avers that she as a result of the accident she has scarring on her right leg and that the scars have made her self-conscious and not wanting to wear her swimsuit to the beach.

[16] Although it was stated that the Claimant may have to undergo another surgery to remove the implanted K-Nail, no estimate or costing was provided so I make no award in relation to this.

Quantification of General Damages

[17] The Claimant endured pain at the time of the injury and had to undergo surgery and physiotherapy which resulted in even more pain. As a young lady in her twenties, I accept that she would be self-conscious of the resulting scars. She had to use crutches for several months. She is restricted in terms of the kinds of activities she can participate in.

[18] I have considered the evidence and medical reports of the Claimant which I accept in absence of evidence to the contrary.

[19] I am also guided by the Court of Appeal in CCCA Limited v Julius Jeffrey².

[20] Counsel for the Claimant submits that the Claimant is entitled to the sum of \$150,000.00 in general damages for pain and suffering and loss of amenities. I have noted the authorities that the Claimant submitted in support as follows:

[21] In **Sheridan Butler v Ralston King et anor**³, a decision of Cottle M, in 2006, an award of \$150,000.00 for pain and suffering and loss of amenities was made to a Claimant who was age 22 at the time of the accident and suffered a compound fracture of the right thigh, right hip and resultant scars. In **Sherma Mathurin v Rain Forest Sky Rides Ltd.**⁴, a 2010 decision of Georges J (Ag) in Saint Lucia, an award was made of \$150,000.00 for pain suffering and loss of amenities, for similar type injuries, but where the court had given particular consideration to the effect of the injury on the claimant's daily life. The Claimant, a minor, in **Jair Horsford a Minor v Carrington Coppin**⁵ was

² Civil appeal No. 10 of St. Vincent

³ Claim No. 467 of 2005 (Saint Vincent); Judgment delivered August 2006.

⁴ [2010] ECSCJ No. 210 (Saint Lucia); Judgment delivered August 2010

⁵ GDAHVC2008/0621 (Grenada); Judgment delivered May 2011

awarded a sum of \$150,000.00 by Lanns M for pain and suffering and loss of amenities where his injuries included a displaced right femoral fracture, fracture of his right tibia and fibula, scarring of his forehead, nose, wrist and buttock. The Claimant also relied on **Mary Anderson v Kenson Donacien and another**⁶, where an award of \$150,000 was made in 2014 for pain and suffering and loss of amenities to a 41 year old Claimant who suffered a comminuted fracture of the mid-shaft of the left femur and right femur, soft tissue injury to the right ankle and neck and sprain of the right acromioclavicular joint.

[22] The cases above have a significant degree of similarity with the case at bar in the nature of the injuries suffered although each has some factual differences that made the injuries more severe those of the Claimant. I bear in mind that the medical evidence in the case at bar is that the Claimant has progressed well from being totally non-weight bearing to being fully weight bearing as at August 2013. Her prognosis is good.

[23] Having considered the particular circumstances of this case and applied my discretion thereto, I award the Claimant the sum of \$140,000.00 as a total sum for her pain suffering and loss of amenities.

INTEREST

[24] Counsel for the Claimant has submitted that Interest should be awarded on pain and suffering and loss of amenities for the date of filing of the claim to the date of Judgment and on special damages for the date of the accident to the date of Judgment and urges the Court to apply the rate of 2 ½ % on the Special Damages and 5% in respect of General Damages. This principle was addressed by the Court of Appeal in **Alphonso and Others v Deodat Ramnath** (1997) 56 WIR 183 and I find it as instructive.

[25] Consequently, Interest at the rate of 2 ½ % per annum is awarded to the Claimant on the Special Damages from the date of the accident to the date of judgment and 5% per annum on the General

⁶ [2014] ECSCJ No. 186 (Saint Lucia); Judgment delivered August 2014 by Taylor-Alexander. M

damages from the date of filing of the claim to the date of judgment. After judgment, the Claimant is entitled to Interest at the rate of 5%.

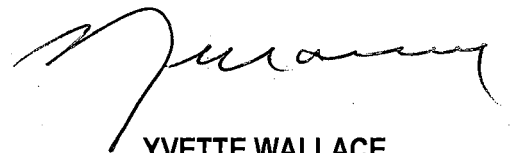
COSTS

[26] An award of costs as budgeted was already made by the Court on 26th July 2013.

SUMMARY OF ORDER

[27] In summary, the following is the order on the assessment of damages:-

- (1) The Defendant will pay the sum of \$49,190.30 as Special Damages with Interest at the rate of 2 ½ % per annum from the date of the accident being 7th July 2012, to the date of judgment being 27th April 2017.
- (2) The Defendant will pay, in addition, the sum of \$140,000.00 as general damages for pain and suffering and loss of amenities with Interest at the rate of 5% per annum from the date of filing of the claim being 23rd January 2013, to the date of judgment being 27th April 2017.
- (3) The Defendant will pay interest at the rate of 5% on the total global sum of \$189,190.30 from today's date until payment.


YVETTE WALLACE
Master (Ag)