

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2016/ 0628

BETWEEN:

MYRTLE CYNTHIA NICHOLAS

Claimant

and

DELBERT CHARLEMAGNE

Defendant

Appearances:

Mrs. Maureen John-Xavier for the Claimant

Mr. David Moyston for the Defendant

Ruling on Assessment of Damages

2017: June 29

1. **ACTIE, M:** The claimant, a post mistress employed by the Government of Saint Lucia, obtained judgment in default of acknowledgment of service on 1st November, 2016. The matter now comes on for assessment of damages suffered as a result of a collision with the defendant's vehicle on 14th May, 2014. The defendant failed to comply with the timelines and procedures outlined in CPR 12.13. Accordingly, the assessment shall proceed on the claimant's submissions.

Special Damages

2. The claimant pleaded, particularized and proved and is allowed an award for special damages for the total sum of \$23,303.16 comprising the following:

1. **Loss of motor car**

The accident survey gave the car a pre-accident value of \$23,000.00 less a salvage value of \$4600.00 making an award of \$18,400.00 under this head.

2. Ambulance fee- \$80.00
3. Medical Reports \$600.00
4. St. Jude's Hospital expenses - \$1704.00

5. Medication - \$ 359.16
6. **Medical Expenses/Consultations -**
 - i. Dr Dagbue- \$1560.00
 - ii. Dr Thomas Joinville - \$400.00
 - iii. Holistic rehab- \$200.00

Loss of Income

7. The claimant produced salary slips to prove her net monthly wages in the sum of \$690.63. It is the evidence that the claimant was out of work for a period of 7 months. The claimant received contributions from National Insurance Corporation in the sum of \$1563.48. Accordingly, an award of \$4,834.41 - \$1,563.48 = \$3270.93 is made for loss of income.

Domestic Assistance

8. The claimant claims an award for domestic assistance for 181 days at \$50.00 a day making a total of \$9050.00. The costs of care for services provided by relatives and third parties are usually a separate head of damages allowed in personal injuries cases. The court in **Donnelly v Joyce**¹ stated:

“In an action for personal injuries in an accident, a plaintiff was entitled to claim damages in respect of services provided by a third party which were reasonably required by the plaintiff because of his physical needs directly attributable to the accident; the question whether the plaintiff was under a moral or contractual obligation to pay the third party for the services provided were irrelevant; the plaintiff's loss was the need for those services, the value which, for the purpose of ascertaining the amount of his loss, was the proper and reasonable cost of supporting the plaintiff's need.”

9. The claimant did not lead evidence of the persons who provided the homecare and assistance during convalescence. It is always necessary for the claimant to plead and prove with proper particularity of the damages suffered prior to the filing of the claim in

¹ (1973) ALL ER 475

order to put the defendant on notice of the matters he/she has to respond. The court in **British Transport Commission v Gourley**² held that

“It is not enough for a claimant to say that he sustained loss. A party claiming damages must prove his case, and to justify an award of these damages he must satisfy the court both as to the fact of damage and its amount”

10. It is the medical evidence that the claimant suffered substantial injuries and was bedridden for about 7 months. The court has in recent years allowed a nominal award which is an amount not out of scale where the issue is not proof of loss but lack of evidence to substantiate the amount of the loss. Counsel for the claimant concedes and the court allows, a nominal award in the sum of \$3000.00 for domestic care and assistance.

Future medical care

11. The claimant has persistent wedging of the vertebrae which gives her permanent Mal-alignment of the spine which will predispose her to lumber spondylosis and disc degeneration. The claimant has developed osteoarthritis as a result of the injuries. These conditions may eventually lead to nerve root irritation or compression. According to the medical report, if this occurs, she would be requiring spinal decompression surgery and fusion. Dr. Dagbue in a medical report dated 20th August, 2016, recommended future surgery for spinal decompression surgery and fusion at the costs of \$25,000.00 and a hip replacement at an estimated cost between \$35, 000.00 to \$40,000.00.
12. It is the evidence that the claimant's condition has worsened since November 2016. The claimant was in Martinique at the time of the assessment undergoing medical procedures. Dr Dagbue in a medical report, dated 10th May, 2017, confirmed that the claimant underwent the recommended spinal decompression surgery. The claimant provided proof of payment in the sums of \$40,126.45 and \$12, 307.52 respectively for

² [1956] AC 185

the surgical procedure and hospital fees. The claimant also claims the airfare to Martinique in the sum of \$1187.39. The sums claimed are all substantiated with documentary evidence.

13. Dr Dagbu also stated that the claimant will most likely require total hip replacement in the future, if the osteoarthritis of her left hip worsens, with an estimate cost between the sum of \$35,000.00 to \$40,000.00. Taking a median of the amounts proposed, I award the sum of \$37,500.00 for hip replacement. Accordingly a total sum of \$53,621.36.+ \$37,500.00 = \$91, 211.36 is awarded for future medical care.

General Damages

14. The claimant claims general damages for pain and suffering and loss of amenities in the sum of \$100,000.00. General damages are usually determined by 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.
15. Dr Dagbue states that the claimant sustained a 40% wedge compression fracture of L4 and developed osteoarthritis of the left hip. She complained of continuous pain in her left hip and back, tilting of the back, walked with a limp and was unable to perform basic functions on her own for the first 6 months of her injuries. Upon further review, the claimant was diagnosed with Post traumatic healed wedge compression fracture of L3 and L4; osteoarthritis of the left hip; osteoarthritis of the left sacroiliac joint. According to the evidence, the claimant, two years post-accident, was able to perform basic activities but with difficulty as she suffered persistent back and hip pains whenever she stood for long periods or lifted heavy objects.
16. An award of damages for pain and suffering and loss of amenities is incapable of exact estimation. The court must strive for consistency by using comparative cases

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

tailored to the specific facts of the individual case. Lord Hope of Craighead in **Wells v Wells**⁴ 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 plaintiff’s damage”.

17. The claimant referred the court to the decisions of **Miriam Myers v Dickenson Bay Hotel Management Ltd DBA Sandals Antigua**⁵ and **Verona Chanelle Faucher v Kenson Donacien**⁶
18. The claimant in **Miriam Myers v Dickenson Bay Hotel Management Ltd DBA Sandals Antigua**, 46 years old, suffered L4/5 broad disc herniation with severe and degeneration of the L4/5. The court in 2016, awarded the sum of \$95,000.00 for pain and suffering and loss of amenities.
19. In **Verona Chanelle Faucher v Kenson Donacien**⁷, the claimant 27 years old, suffered a fracture of the traverse process of L4 and L5 vertebrae, fracture of the right wing of the sacrum, a fracture of the superior and inferior pubic rami on both sides with separation of the symphyses pubis and post traumatic vaginal bleeding. The claimant was hospitalized for approximately 7 days. The court awarded the sum of \$130,000.00 for pain and suffering and loss of amenities.
20. I have reviewed and considered the authorities cited by the claimant in support of the assessment. I also noted the several cases referred to in the **Miriam Myers** case. I take into consideration the claimant is 59 and a lot older than the claimants in the authorities cited. I also take into account the fact that the claimant has undergone the spinal decompressions surgery and fusion which is one of the two procedures recommended by Dr Dagbue to alleviate her pain and discomfort. The court was not provided with an updated report since the procedure in Martinique. In the

⁴ [1998] 3 All ER 481

⁵ ANUHCV2013/0231 delivered on 6th October 2016

⁶ SLUHCV 2013/0964 delivered 11th August 2015

⁷ SLUHCV 2013/0964 delivered 11th August 2015

circumstances, I am of the view that an award in the sum of \$60,000.00 for pain and suffering and loss of amenities would be appropriate in the circumstances.

Order

21. In summary the claimant is awarded the following:

(1) **Special Damages** in the sum of \$47,974.09 with interest at the rate of 3 % from the date of the accident until judgment and at the rate of 6% from the date of judgment until payment in full comprising of the following:

- i. Loss of vehicle- \$18,400.00
- ii. Medical expenses/incidentals - \$23,303.16
- iii. Loss of income - \$3270.93.
- iv. Domestic Assistance - \$3000.00

(2) **General Damages** in the sum of \$151,211.36 with interest at the rate of 6% from the date of judgment until payment in full comprising of:

- i. Future Medical Care - \$91, 211.36
- ii. Pain and suffering and loss of amenities - \$60,000.00

(3) **Prescribed Costs** in the sum of \$16, 438.90 on the global sum in accordance with CPR 65.5.

**Agnes Actie
Master**

By The Court

Registrar