

EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: SLUHCV2015/0806
Between

BRITTNEY HERMAN

Claimant

AND

ALVAH LAFEUILLEE

Defendant

Before: Ms. Agnes Actie

Master

Appearances: Mr. Huggins Nicholas of counsel for the claimant
Mr. Dexter Theodore Q.C. of counsel for the defendant

Order on Assessment of Damages

2018: July 10

1. On 24th December 2012, the claimant, 22 years of age at the time of the accident, was a passenger in a motor vehicle driven by the defendant. The said vehicle collided with another causing the claimant to suffer injuries. The matter now comes on for assessment of damages.

Special Damages

2. The defendant conceded special damages pleaded and proved comprising of the following
 1. Medical expenses - \$1085.00
 2. Transportation - \$695.00
 3. Hospital Bill - \$4799.72
 4. Medical report - \$250.00

5. Cost of home care - \$3500.00
6. Cost of home supplies - \$740.00
7. Damage to jeans - \$185.00
8. Lost watch - \$120.00
9. Damages to shoes - \$95.00
10. Traffic Accident Report - \$200.00

The court awards special damages in the sum of \$11,669.72, 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.

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*¹ 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.**
4. Dr Dagbue, in a medical report dated 25th November 2013, described the claimant as having suffered an injury to her lower right limb. She **was admitted at the St Jude's Hospital with a** comminuted fracture of the right femur. She was initially managed with skeletal traction with **Steinman's pin, but had definitive management** of open reduction and internal fixation of the right femur with plate and screws. She was discharged after 5 days with follow up out-patient clinic which she continued up to October 22nd, 2013. She complained of pain in the right thigh on walking long distances and in cold weather. The report concluded that the claimant had healed well, walks without a limp, but will most likely continue to have pain in her right thigh off and on when she walks long distances or carries heavy objects.
5. An award for 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

¹ *Cornilliac v St Louis* (1965) 7 WIR 491.

each case. The court must strive for consistency by using comparative cases tailored to the specific facts of the individual case. 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 Wells*² 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”.

6. The claimant cites many authorities but relies specifically on the decision in *Mary Anderson v Kenson Donacien*³ where in 2014, the Court made an award in the sum of \$150,000.00 for pain and suffering and loss of amenities. The claimant in that case suffered a comminuted fracture of the mid-shaft of the left femur; comminuted fracture of the distal 1/3 of the right femur; blunt soft tissue injury to the right ankle and neck and a type 111 sprain of the right clavicular joint. She was hospitalized for approximately two weeks, during which time she was treated with skeletal traction and the insertion of permanent Steinman pins in both lower limbs. she underwent open reduction and internal fixation of both fractures. Her right shoulder was deformed, as the end of her right collar bone stuck out clearly beneath the skin. She walked with a pronounced and awkward limp and had challenges when walking long distances. She was unable to run at all and had to have physical therapy to improve her gait.
7. The injuries sustained and the resulting impact in the *Mary Anderson* case are more serious than the injuries in the case at bar. The claimant at bar failed to provide an updated medical report. The medical report dated 25th November 2013 indicates that the claimant is well healed but will continue to have pain in her right thigh off and on, especially when she walks long distances or lifts heavy objects.

² [1998] 3 All ER 481

³ 2013/0965

8. I take into consideration the injuries, **the claimant's** age and the continuous pain. I also take into consideration of the authorities cited by the defendant and accordingly award the sum of \$60,000.00 for pain and suffering and loss of amenities.

ORDER

9. In summary, the defendant shall pay the claimant the following:
 1. Special Damages in the sum of \$11,669.72, 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.
 2. General Damages for pain and suffering and loss of amenities in the sum of \$60,000.00, with interest at the rate of 6% from the date of judgment until payment in full.
 3. Prescribed Costs in the sum of \$6,987.79 pursuant to CPR 65.5

AGNES ACTIE

MASTER, HIGH COURT

BY THE COURT

REGISTRAR