

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2015/0466

BETWEEN:

CLEMMIE BOYD

Claimant

and

ELLON LEWIS
VERNON MORAIN

Defendants

Appearances:

Ms. Hazel Hopkin of Counsel for the Claimant

Mrs. Melissa Modeste-Singh for the Second-named Defendant

The First-named Defendant absent and unrepresented

2018: July 20.

ASSESSMENT OF DAMAGES

[1] WALLACE, M.: On 12th March 2014, the Claimant (also referred to herein **as “Ms. Boyd”**), then 76 years old, was a passenger in a bus owned by the second-named Defendant (also referred to herein as **“Mr. Morain”**) and driven at the material time by the first-named Defendant. The bus became involved in a collision with another **bus along the Grenville to St. George’s route in the Paddock area** and Ms. Boyd was thrown to the floor of the bus as a result of the impact from the collision.

[2] Ms. Boyd sustained personal injuries as a result of the accident and was transported to hospital where she was admitted and treated.

[3] Ms. Boyd commenced legal proceeding on the 15th October 2015 claiming damages for negligence and/or breach of statutory duty, interest and costs. The First Defendant took no part in the proceedings. On the 5th May 2017, judgment on admission was entered for Ms. Boyd against Mr. Morain with damages to be assessed. The parties have consented to relying on the written submissions and the witness statements in support for this assessment.

Special Damages

[4] Ms. Boyd has claimed special damages in the amount of Two Thousand Seven Hundred and Fifty-eight Dollars and Thirteen Cents (\$2,758.13). Mr. Morain does not dispute this claim. I am satisfied that special damages have been pleaded and have been proven in the amount of Two Thousand Seven Hundred and Fifty-eight Dollars and Thirteen Cents (\$2,758.13). That sum is allowed.

General Damages

[5] 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 extent to which the **claimant's** pecuniary prospects have been affected.

[6] The Court must award a fair and reasonable amount in compensation to reflect the loss or injury caused to the claimant by the defendant's actions. The sum is not calculable by any fixed formula but is intended to put the injured party in the position that they would have been had they not sustained the injury. A **claimant's** general damages may represent the damages for pain and suffering, loss of amenities and for future loss of earnings.

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

[7] In *Wells v Wells*,² Lord Hope of Craighead said that:

"... The amount of the award to be made for pain, suffering and the 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 best estimate of the plaintiff's general damages ..."

[8] The criteria that a judge should apply in the exercise of his or her discretion in relation to general damages for personal injuries is well set out in the Civil Appeal case of *CCCA Limited v Julius Jeffrey*³ and reads as follows:

"...it is, in my view, a function of the law, as far as possible, to be predictable, given the infinite variety of the affairs of human kind. In the context of damages for personal injuries, there are certain principles which apply and there is a discretion which needs to be exercised. In the case of pain, suffering and loss of amenity, that discretion could be wholly subjective and hence unpredictable, or it could be precedent based; that is to say; the trial judge, having considered all of the evidence led before him, would take into account other awards within the jurisdiction and further afield. Awards of similar injuries would be clearly very helpful in relating the claimant's injuries on a comparative scale. This is not a precise science, leaving much room for the trial judge's discretion".

Nature and Extent of the Injuries Sustained

[9] The injuries sustained by Ms. Boyd as a result of the accident as confirmed in the Medical Report of Dr. Kendra Blanchard dated 15th March 2015 were as follows:

1. Laceration to the inferior region of the lower lip
2. Superficial abrasion over the right knee
3. Displaced Intra-articular fracture left distal radius
4. Nasal Fracture with deviated septum
5. Thoracic wall contusion
6. Contusion to the right orbital region
7. Acute blood loss

² [1998] 3 ALL ER 481.

³ C.A. No. 10 of 2003 SVG.

[10] Ms. Boyd's most severe injuries were the displaced Intra-articular fracture left distal radius, the Nasal Fracture with deviated septum and the Thoracic wall contusion. She underwent two surgeries for the deviated septum and for the intra-articular fracture of the radius. She was hospitalized for two weeks.

[11] The evidence before me is that Ms. Boyd, who is retired, is right-handed and had sustained a prior injury to her right wrist. She had other medical issues prior to the accident. A few days after the surgeries, Dr. Blanchard noted that Ms. Boyd had no difficulty breathing or any facial deformities. Further, upon examination by Dr. Blanchard some two months after the accident, Ms. Boyd seemed to have a full range of movement, except for a slight deformity at the left wrist. She was advised to continue with heat therapy and exercises of the wrist.

Nature and Gravity of the Resulting Disability

[12] Ms. Boyd stated that she still suffers with pain and itching in her right eye. In her witness statement she states:

*"...today my right eye continues to itch and on occasion I experience pain in it. At times I see blurry out of it. I would like to have a test carried out on my eye however; I do not have the finances to do so."*⁴

[13] Ms. Boyd also averred that she experiences pain in her left hand and there is hardly anything that she can do now with the hand.⁵ Her witnesses also state that Ms. Boyd is unable to use her left hand as she did before the accident. She is unable to grasp items and experiences pain.⁶

⁴ Paragraph 26 of Witness Statement of Clemmie Boyd.

⁵ Supra, note 4 at Paragraph 27.

⁶ Witness Statements of Andriana Panchoo paragraph 20, Joahill Panchoo paragraph 14 and Joseph Panchoo paragraph 14.

Pain and Suffering and Loss of Amenities Suffered

- [14] Ms. Boyd's **evidence is that she experienced excruciating pain from the time of the accident through to date.** She felt pain in her chest, from her left hand and her wrist. She continues to experience pain in her left wrist which has significantly reduced her ability to use it for everyday activities.
- [15] Ms. Boyd also asserted that she experiences pain on a daily basis, from her shoulder to the fingers, and continues to experience pain and blurriness in her eye. Further, she is no longer able to exercise as a result of the injury.
- [16] Ms. Boyd stated that she now relies heavily on family members to assist her in performing daily chores. She relies on others to cook, wash, clean and comb her hair. She has difficulty changing her clothes and needs assistance ascending and descending stairs.
- [17] Ms. Boyd has provided no medical evidence to support her claim on much of her disability and loss of amenities. She stated in her evidence that she has been unable to seek specialist care due to her financial condition.
- [18] Counsel for Mr. Morain submitted that Ms. Boyd's **claims have not been** substantiated by medical evidence as only an expert could ascertain Ms. Boyd's assertions that she suffers pain from her left shoulder and stiffness in her fingers.
- [19] Counsel further submitted that there was no medical evidence of loss of amenities. Moreover, Ms. Boyd's **assertion about lack of financial means to visit a doctor is** irrelevant as there was free or subsidized medical care available. Additionally, Ms. Boyd was at liberty to apply for interim payment and did not do so.

Quantification of General Damages

- [20] I have considered the evidence and medical report of Ms. Boyd and the Submissions of both counsel.
- [21] Counsel for Ms. Boyd invited the Court to consider the sum of \$120,000.00 in general damages for pain and suffering and loss of amenities. I have noted the authorities that Ms. Boyd submitted in support of this sum. With respect to the fracture to the wrist, the Court was referred to *Randy James v. Leroy Lewis*,⁷ an Antigua decision in 2009, where an award of \$70,000.00 for pain and suffering and \$60,000.00 for loss of amenities was made to a 39 year-old claimant. The claimant in that case suffered facial injuries to the right eye, a fracture of both bones of the right forearm and severe internal de-arrangement of the left knee with rupture. In *Laura Marrocco v The Attorney General of Antigua and Barbuda*⁸ another Antigua decision made in 2006, an award was made of \$60,000.00 where the claimant, who was 67 years old, sustained a fracture to her intra-articular right upper end tibia and fractures of the right distal radius and distal ulna and a traverse fracture and bicondylar non-displaced tibia plateau fracture of the right knee.
- [22] Ms. Boyd also relied on *Eastman v PSTC*⁹ where an award of \$5,000.00 was made for general damages in 1970 for fracture of a wrist, serious laceration of knee and other lacerations. Counsel for Ms. Boyd submitted that when that sum is updated and converted to 2010, it would equate \$60,000.00 in Eastern Caribbean currency.

⁷ ANUHCV 2007/0403.

⁸ ANUHCV 1997/0240.

⁹ Extracted from *The Lawyer*, 1549/68; DD p. 61.

- [23] Counsel for Ms. Boyd also submitted the cases of *Ramadhan v Mahabir Transport Services*,¹⁰ a 1973 decision also from Trinidad and Tobago, where the court awarded TT\$7,000.00 (Adjusted to TT\$195,776.00 in 2010), and *Thackordeen v Hart*,¹¹ also from Trinidad and Tobago, the court awarded the claimant TT\$26,548.00 for a fractured radius.
- [24] With respect to the face and lip injuries, Ms. Boyd referred to *Mercedes Delplesche v Samuel Emmanuel De Roche*,¹² decided in 2013 in Saint Vincent, the Court also awarded the claimant \$60,000.00 where she sustained trauma to the head and left knee, abrasions to the left side of the face, laceration to the forehead, nose and lower lip and bleeding from left nostril. In *Mandissa Jacob v Boniface Romulus*,¹³ a decision from Saint Lucia, the Court awarded the claimant \$60,000.00 where she sustained abrasions to the left side of the face, forehead, back of the right elbow, left hand and back of the shoulder; contusions to the lower rib cage, comminuted fracture of the mid shaft of the humerus, and traction neuropia of the left median nerve.
- [25] Ms. Boyd also referred to the cases of *Wadadli Cats Limited v Frances Chapman*,¹⁴ *Ferreira v Lucky-Samaroo*¹⁵ and *Cyprien v Doogar*¹⁶ in support of the sum of \$120,000.00 for pain and suffering and loss of amenities.
- [26] Counsel for Mr. Morain submitted that none of Ms. Boyd's **authorities are for like** injuries or similar prognosis. Moreover, none of the awards are within the local jurisdiction and courts ought to be guided by comparable awards for comparable injuries within the jurisdiction and other jurisdictions, if necessary, with similar social and economic conditions to those prevailing within the country. Further, in

¹⁰ S942/DD p 61.

¹¹ 74/70 DD p 65.

¹² Claim No. 41 of 2012.

¹³ SLUHCV2006/0457.

¹⁴ Civil Appeal No. 19 of 2004.

¹⁵ 1414/66 DD p. 35, 1970.

¹⁶ S 86/91 4.5 p. 86, 1992.

the absence of medical evidence of continuing disability, loss of amenities and pain and suffering that continues, a more reasonable award should be \$20,000.00 as there is no loss of amenities.

[27] Counsel for Mr. Morain referred me to the following authorities:

Ann Robertson v The Attorney General¹⁷

Damon Dubois v Matthias Jerome and anor¹⁸

Mercedes Delplesche v Samuel Emmanuel De Roche¹⁹

Nutbrown v Sheffield Health²⁰

Marion Miller v Imperial College Healthcare NHS²¹

[28] In Ann Robertson, a decision of this jurisdiction delivered in 2010, an award totalling \$60,000.00 was made to the claimant, \$45,000.00 for pain and suffering and \$15,000.00 for loss of amenities. The claimant in that case, a 70 year-old woman, suffered an open fracture of her left fibula and tibia as well as a deep extensive wound with irregular edges with exposed bones. There was audible and palpable bony crepitation and a superficial abrasion. She was hospitalized for ten days and follow up treatment continued. She was later readmitted for wound management due to an infection. In Damon Dubois, a 2012 decision from this jurisdiction, an award was made of \$27,500.00 where the claimant, who was a twenty-seven (27) year-old man, was involved in an accident as a result of which he sustained soft tissue injuries of the left shoulder, chest, face and knee and a grotesquely displaced closed comminuted right arm and dislocation of the bone. The claimant, who was right handed, was left with stiff right wrist with a markedly reduced range of motion and mildly stiff right fingers and thumb, and would have permanent difficulty with delicate and laborious activities.

¹⁷ GDAHCV 2009/0338.

¹⁸ GDAHCV2011/0088.

¹⁹ *Supra*, Note 9.

²⁰ [1993] 4 Med. L. R. 187, Q.B.D at paragraph 16.

²¹ [2014] EWCH 3772 Q.B. para 17.

[29] Counsel for Mr. Morain made the point that “Age” is one of the relevant factors the Court should take in account when assessing damages for personal injuries where there is a claim for loss of amenities or continuing pain and suffering.

[30] In Marion Miller²² Judge Curran, QC, stated,

“...One must look at all the circumstances of the case and, in particular, consider the plaintiff as he was before his injury and as he has become, and, of course, have regard throughout to his age at the time of the injury, the time of the trial, and his life expectancy.”

[31] Ms. Boyd and her witnesses have provided the court with the update on her condition. It is unfortunate that there is no medical evidence that the court can rely on regarding the continuity or effects of the injuries on Ms. Boyd as an expert assessment would be necessary to substantiate much of Ms. Boyd’s **and** her witnesses’ assertions. She has deposed to her ongoing experience with pain. She has also deposed of the limitation with respect to movement and every day activities.

[32] I accept that Ms. Boyd’s **injuries have been the source of some amount of pain**. However, I am of **the view that some of her limitations today** “*may not be from the accident but by the normal functioning of the body as time passes.*”²³

[33] I agree that “Age” is a significant fact in determining the quantum of the award as the Court will **have to consider the impact for someone who is not “in the prime of life”**.²⁴

[34] Although Ms. Boyd has not provided any case from this jurisdiction with respect to quantification of the damages, it does not mean that the cases provided are not helpful in the process of quantification. However, I find that the injuries sustained

²² *Supra*, note 20.

²³ See *Laura Marrocco v The Attorney General of Antigua and Barbuda*, *Supra*, note 8 at paragraph 15.

²⁴ *Potts J in Nutbrown v Sheffield Health*, *supra* note 19 at paragraph 16.

by Ms. Boyd were not as severe as those in many of the cases she relied on. For example, in Randy James, both forearm and knee were fractured; in Laura Marrocco, there were fractures of the tibia and knee; in Mercedes Delplesche there was also trauma to the head and in Mandissa Jacobs there was fracture of humerus.

[35] Equally, counsel for Mr. Morain has asked that the Court discount the awards given by the court in the cases submitted in response and award \$20,000.00. I believe that is too low.

[36] Though dissimilar in the extent of the injuries, several of the authorities provided have been helpful in arriving at an award for general damages. Having considered the range of authorities and their respective dates of delivery, the evidence before me, and all the circumstances of this case, I am of the opinion that an award under the head of Pain and Suffering and Loss of Amenities in the sum of \$60,000.00 will suffice to compensate Ms. Boyd.

Interest

[37] Interest is usually awarded on general damages awarded to a claimant for pain and suffering and loss of amenities from the date of service of the claim form to the date of judgment at the rate payable on money in court placed on short-term investment. Similarly, with respect to special damages, Ms. Boyd is also entitled to interest at the rate payable on short-term investment from the date of the accident to the date of judgment. This principle was addressed by the Court of Appeal in *Alphonso and Others v Deodat Ramnath* [1997] 56 WIR 183, and I find it instructive.

[38] After judgment, Ms. Boyd is entitled to interest at the rate provided in the Judgment Act to the date of payment in full.

[39] In summary, for the foregoing reasons, the Court orders damages for the Claimant, Ms. Boyd, as follows:

(1)	Special Damages	\$2,758.13
(2)	General Damages	\$60,000.00
	TOTAL	\$62,758.13

[40] It is hereby ordered and adjudged that the Defendant, Mr. Morain, do pay to the Claimant damages assessed as follows:

- (i) \$2,758.13.00 as special damages with interest on special damages at the rate of 3% per annum from date of accident to date of judgment.
- (ii) \$60,000.00 for pain and suffering and loss of amenities with interest from the date of service of the claim to the date of judgment.

[41] Interests on all awards following judgment is at the statutory rate from the date of assessment to the date of payment in full.

[42] The Claimant will also be awarded prescribed costs as per Rule 65.5 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

Yvette Wallace
Master (Ag.)

By the Court

Registrar