

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDHACV 2017/0235

BETWEEN:

GERALDINE WELSH

Claimant

and

JOEL BUDD

Defendant

Appearances:

Ms. Sabina Gibbs for the Claimant

Ms. Avril Anande Trotman-Joseph with Ms Jodi-Ann Johnson for the Defendant

2018: July 17; 30.

RULING ON ASSESSMENT OF DAMAGES

[1] ACTIE, M.: On 20th June 2011, a vehicle owned and driven by the defendant, while reversing, collided with the claimant. Judgment in default was entered against the defendant for special damages in the sum of \$3,751.95 with general damages to be assessed. Before the court is the application for the assessment for damages.

General Damages

[2] The claimant, a cleaner at the revenue office, seeks general damages in the sum of \$150,000.00. General damages are usually determined taking into consideration the principles set out by Wooding CJ in the seminal case of

Cornilliac v St Louis¹ 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.**

- [3] The claimant, 52 years at the time of the accident, suffered an injury to her right wrist and right side of her hip. She was referred to the hospital where analgesics were prescribed with extended sick leave.
- [4] The claimant presented several medical reports to prove the nature and extent of her injuries:
- (i) 12th August 2011 - Dr. Kester Dragon diagnosed the claimant as having sustained direct trauma, resulting in contusion of the right hip. The pain in her right wrist had subsided but she complained of pain in the right hip especially when getting up from a sitting position with shocking sensation in the right buttock.
 - (ii) 10th October 2012 - Dr. Linward Fleary assessed the claimant with bilateral mild osteoarthritis with small osteophytes posterior acetabular joint space narrowing worse on the right with degenerative changes to the hip.
 - (iii) 28th November 2012 - Dr. Kester Dragon reassessed the claimant on 5th September 2012. The report noted that the claimant ambulated with an abnormal gait with tenderness on palpitation on the posterior over the gluteal region. An MRI report indicated degenerative changes in the hip joint which may have been incidental or secondary osteoarthritis as a result of the trauma on the hip.
 - (iv) 12th June 2017 - Dr. Kester Dragon opined that the pain experienced in the right hip could be as a result of the injury which she sustained from the accident. **The report indicated that the claimant's condition had not worsened since the accident but was expected to improve.** The report did

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

not foresee future indication for surgery for the contusion of **the claimant's** right hip but she needed analgesics, especially after repetitive or vigorous physical activities. However, the pre-existing degenerative joint disease of both hips may require future surgical intervention.

- [5] An award of 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 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 referred the court to several authorities as comparatives to assist in making an appropriate award. The court notes that the injuries in the authorities cited were more severe with the injured, all hospitalized over a period of time, unlike the claimant. The court notes the decision in *Mercedes Delplesche v Samuel Emmanuel De Roche* where the claimant, 54 years, suffered trauma to the head and left knee, abrasion to face, laceration to forehead and nose, bleeding to nostrils with scars to forehead and nose. She was admitted to hospital for four (4) days and upon discharge attended an outpatient clinic for physiotherapy sessions. In 2013 the court awarded the sum of \$65,000.00 for pain and suffering and loss of amenities.

² [1998] 3 All ER 481

[7] The defendant suggests an award in the sum of \$7,500.00 and relies on the decision in *Dexter James v M & A Soufriere Sightseeing Tours Ltd et al.*³ In this case the claimant suffered tenderness in the right hip; 2cm superficial laceration in right heel with 1cm superficial laceration to the forehead. The claimant was examined and discharged the same day with sick leave. She was anticipated to regain full recovery within one or two weeks. In 2009, the court awarded the sum of \$7,500.00. The defendant is of the view that the claimant in this present case should be awarded a similar award.

[8] The claimant claimed an award under each of the heads listed in *Cornilliac v St Louis*. In an assessment of damages the practice is to grant a global sum taking into consideration the principles espoused by Wooding CJ in the seminal case. In *Kathleen McNally v Eric Lotte and CITCO (BVI) Ltd*, Rawlins J. stated:

“The practice is to grant a global sum for general damages for pain and suffering and loss of amenities, considering these against the background of the nature and extent of the injuries sustained and the nature and gravity of the resulting impairment and physical disability.”

[9] The purpose of an award is to put the claimant in the position that she would have been if the accident had not happened. The court must award a fair and reasonable sum to compensate the claimant for the injuries suffered. It is the evidence that the claimant has since the accident suffered consistent pain in her right hip and continued to be in pain up to the time of the evaluation in 2017. The claimant complains of the inability to stoop for prolonged periods to perform her employment as a cleaner and to do her usual gardening.

[10] In considering what is reasonable for this purpose, the court should have regard to all the relevant circumstances. I note the nature of the injuries suffered, the persistent pain since accident, and the obvious impact on the claimant. The

³ SLUHCV 2002/0965 delivered on 28th January 2009

injuries in Mercedes Delplesche v Samuel Emmanuel De Roche were slightly **beyond the claimant's injuries when considering that the claimant was hospitalized** for four (4) days, unlike the present claimant. In the circumstances, I am of the view that an award in the sum of \$50,000.00 for general damages with \$30,000.00 for pain and suffering and \$20,000.00 for loss of amenities is reasonable in the circumstances.

Loss of Pecuniary Prospects

- [11] The claimant seeks an award in the sum of \$10,000.00 for loss of pecuniary prospects. The defendant in response suggests a nominal award of \$1,500.00.
- [12] In Mitcham Black v The Attorney General of Saint Lucia,⁴ Hariprasad-Charles J. referred to the test laid down by the Jamaica Court of Appeal in Gravesandy v Moore,⁵ 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.**”

- [13] The medical report of Dr. Kester Dragon states that **the claimant's** condition does not preclude her ability to work but would however be affected after repetitive or vigorous physical activities. **I take into consideration the claimant's employment** as a cleaner and the obvious effect as a result of the pain. However, I also note

⁴ SLUHCV 2004/0502 delivered on 19th March 2007

⁵ (1986) 40 WIR 222

the medical evidence which states that the claimant is expected to improve. In the circumstances, I will award the sum of \$5,000.00 under this head.

Costs of Future Medical Care

[14] The claimant seeks an award in the sum of \$35,000.00 for future medical care. The defendant suggests a nominal award in the sum of \$7,500.00.

[15] Dr. Linward Fleary, in medical report dated 10th October 2012, speaks of bilateral mild osteoarthritis with small osteophytes posterior acetabular joint space narrowing worse on the right with degenerative changes to the hip. Dr. Dragon also noted degenerative changes in the hip joint which he opined may have been incidental or secondary osteoarthritis as a result of the trauma to the **claimant's hip** which may result in surgical intervention.

[16] The Privy Council in *Seepersad v. Persad & Anor* (Trinidad and Tobago) [2004] UKPC 19 in relation to the costs of future medical treatment and medication states:

"It is not possible to form an accurate and verifiable estimate of the future cost of medical treatment and medication, because so much depends on how the appellant progresses in the future. It was not challenged that he had incurred such expense in the past, as is shown by the inclusion in the agreed special damage of a significant sum for medical treatment and medication. It does appear that there is likely to be some continuing expense, even if he improves significantly as time goes on. In their Lordships' opinion the most appropriate way to deal with this item is to allow a figure which will reflect the possibility of his incurring future expense of this type, on similar lines to the well-established approach to valuing loss of employment capacity: of such cases as *Smith v Manchester Corporation* (1974) 17 KIR 1 and *Moeliker v Reyrolle & Co Ltd* [1976] ICR 253."

- [17] The claimant failed to provide documentary evidence to support the amount claimed under this head. The claimant was under the obligation to have obtained a realistic estimate to prove the amount for future medical expenses claimed under this head. In the absence of evidence I will award a nominal sum of \$10,000.00 to compensate for the analgesics and possible surgery.

Domestic Care

- [18] The claimant seeks an award in the sum of \$5,000.00 for domestic assistance during the period of convalescence. The defendant in response contends that the amount claimed should have been pleaded as special damages but nevertheless suggests a nominal award in the sum of \$1,000.00 under this head.

- [19] An award for the costs of care for services provided by relatives and third parties in personal injuries is usually pleaded as special damages and supported by evidence either in the form of receipts or witness statements. In *Donnelly v Joyce*⁶ it was stated that:

"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."

- [20] The court accepts the evidence that the claimant, a dominant right hander, required assistance from family members to perform basic chores. It is the evidence that the claimant's right hand was bandaged for approximately three (3) weeks. I think an award for a period of four (4) weeks at \$50.00 a day to allow for full recovery is reasonable in the circumstances. Accordingly, I award the sum of \$1,400.00 for domestic care.

⁶ (1973) ALL ER 475

Special Damages

- [21] The defendant concedes the cost of \$3,582.79 for a washing machine purchased to assist the claimant due to the wrist injury.

Order

- [22] In summary, the defendant shall pay the claimant the following:-
1. Special damages in the sum of \$3,582.79 for the washing machine together with domestic care in the sum of \$1,400.00 making a total of special damages in the sum of \$4,892.79 with interest at the rate of 3% from the date of accident till judgment and at the rate of 6% from judgment until payment in full.
 2. General damages for pain and suffering and loss of amenities in the sum of \$50,000.00 with interest at the rate of 6% from the date of judgment until payment in full.
 3. Loss of earning capacity in the sum of \$5,000.00.
 4. Future medical care in the sum of \$10,000.00.
 5. Prescribed costs on the global sum in accordance with CPR 65.5.

Agnes Actie
Master, High Court

By the Court

Registrar