

EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2008/0179

BETWEEN:

ANDRE HALLS

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before: Ms. Agnes Actie

Master

Appearances: Ms. Mary Francis for the claimant
Mrs. Tina Louison for the defendant

2018: July 11
August 23

JUDGMENT

[1] ACTIE M: On 24th August 2007, the claimant was shot by a police officer at his home in Ciceron. On 18th February 2008, the claimant filed a claim with statement of claim seeking compensation for injuries sustained during the incident. The matter proceeded to trial and on November 22, 2017, Wilkinson J delivered a judgment in favor of the claimant for damages to be assessed. The matter comes on assessment of damages in accordance with CPR 2000 12.13 and 16.

Background

- [2] On 24th August 2007 at about 1:00 a.m., the claimant was awoken by loud banging noises on the door to his home in Ciceron. He was still in bed when he was accosted by six (6) police officers. The claimant was ordered to raise his hands in the air and to get out of his house. Once outside, he was commanded to lie face down on the ground, while his two hands were handcuffed behind his back by two police officers. While on the ground, one of the police officers shot the claimant in the back of his right leg blasting out the entire calf area. The claimant alleged that after being shot, he was dragged bare back up a hill causing several bruises and lacerations to his face, back and chest.

General Damages

- [3] The claimant who was 26 years of age at the date of the incident and 36 years at the date of judgment, claims for general damages in keeping with the principles outlined by Wooding C J in *Corneliac v St. Louis*.

Nature and extent of the injuries

- [4] Evidence of the nature and extent of the injuries sustained by the claimant has been set out in the medical reports of Dr. Richardson St. Rose, Orthopedic Surgeon.

(1) Medical report dated December 19, 2007: The claimant was assessed as having suffered compound fractures of the proximal ends of the right tibia fibula with much soft tissue loss and a large defect about the lateral aspect of his right knee joint. The lateral popliteal nerve was destroyed. He was admitted to the Victoria Hospital and the wound was cleaned and dressed. The wound was complicated by infection and necrotic tissue and bone and was debrided on 27th September 2009. The large wound was covered by split skin grafting on 17th October 2017. He was discharged after eight (8) weeks on 29th October 2007 with follow ups at the surgical out patients.

(2) Medical report dated April 15, 2014: Upon review on 4th April 2014, the claimant was diagnosed with (1) painful Neuroma about the head of the Fibula; (2) Adventitious Bursa-Cystic about the same level; (3) Permanent Foot drop; (4) Bullet fragments about the knee joint; (5) Permanent damage of the lateral Collateral Ligaments.

The nature and gravity of the resulting physical disability

[5] The small bullet fragments and damage to the collateral ligaments in the vicinity of the **claimant's** knee will produce an unstable knee joint with walking difficulties and chronic pain. The claimant will have a permanent foot drop with unstable knees. The claimant has to undergo further surgical procedures to partly stabilize the knee joint and for the excision of the Neuroma about the head of the Fibula.

The pain and suffering which had to be endured

[6] The claimant was hospitalized for 2 months with severe pain which continues to date.

Loss of Amenities

[7] The claimant avers that due to the foot drop, he is unable to play basketball and dance at parties as he did prior to the incident. The claimant, in his witness statement, states that the shortened right leg and the unstableness of the joint does not allow him to stand for too long. He is embarrassed as he now walks with a permanent limp and is no longer able to walk fast or run.

Analysis

[8] Lord Hope of Craighead in *Wells v Wells*¹ states that 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.**

¹ [1998] 3 All ER 481.

[9] The claimant seeks general damages in the sum of \$180,000.00 and relies on the following awards as comparatives:-

- (1) James Duporte and Avon Lapsey v The Attorney General² - the claimant 25 years and a construction worker, was shot by two officers receiving a wound in his groin area, causing a swollen penis. He was hospitalized for one (1) month with follow up out patients care for 3 months. His ability to have normal urinary and sexual function was diminished. In 2001, the claimant was awarded general damages in the sum of \$150,000.00 with \$50,000.00 for pain and suffering and \$100,000.00 for Loss of amenities.
- (2) Ronal Fraser v Joe Dalrample³: the claimant suffered comminuted fracture of left ankle and lower 1/3 of leg; fractured left medial malleolus of left tibia; severely comminuted fracture of lower end fibula; lateral dislocation of left ankle/tibio talar dislocation with lateral shift of talus with ankle diastases; severely contaminated compound wound with neuro-vascular compromise; the claimant was discharged from hospital after 28 days and taken to his home where he remained bedridden for approximately 4 months after which he began to move around his home and yard with a crutch. He underwent physiotherapy and had to return to the doctor on numerous occasions as he was in constant pain and the fracture was not healing properly. He had full disability of the lower limb and had to have further surgery in Guyana for his ankle joint to be fused as his ankle was not healing. He continued to experience pain and discomfort over twenty months. In 2010, he was awarded general damages in the sum of \$150,000.00 with \$85,000 for pain and suffering and \$65,000.00 for loss of amenities.

² St Kitts Civil Suit No. 67 of 1997 delivered on 30th October 2001.

³ ANUHVV2004/0513 delivered on 5th May 2010.

(3) Gerald Khoury v Keithly George et al⁴ : The claimant, 41 years suffered severe deformity of the left leg and ankle with crepitation and abnormal mobility. He was first hospitalized in Antigua for four days where closed reduction was attempted. It was recommended that he seeks further medical assistance abroad because of the severity of the injuries and non-availability of medical expertise locally. He travelled to the USA and was admitted to a hospital for 19 days where he underwent open reduction and internal fixation whereby two metal plates were put in the ankle and fixed by screws. Upon discharge, he wore a cast for 4 weeks, walked with a cane and developed osteoarthritis of the ankle. In 2004, the court awarded the sum of \$120,000.00 for pain and suffering and loss of amenities.

[10] The defendant submits that an award in the sum of \$100,000.00 is more appropriate as the injuries sustained in the cases cited by the claimant are all distinguishable and more extensive than the case at bar. The defendant cites the cases below and the awards made for more extensive injuries:

(1) Cleos Billingly v Kevon Jessie- Don Anderson⁵: the claimant suffered laceration to left parastatal scalp; deformity of distal leg and left elbow; fracture to left tibia and fibula; fractures to left distal humerus and right thumb. She was hospitalized for 10 days and underwent surgery for external fixation of the distal humerus as well as closed reduction and casting of the fracture of the tibia/fibula. She underwent further surgery to remove the external fixator and was discharged with follow up treatment at the out patients clinic. The claimant healed well but continued to complain of pain and stiffness of the elbow with post trauma arthritis. In 2014, the court awarded the sum of \$110,000.00 for pain and suffering and loss of amenities.

⁴ ANUHCV1999/0249 delivered on 23rd April 2004.

⁵ SVGHCV2013/0096 delivered on 3rd December 2014.

(2) *Sherma Mathurin v Rain Forest Sky Rides Ltd*⁶: The claimant suffered a displaced intra-articular open fracture of the lower end of the right tibia with a fracture of the fibula; multiple grazes and bruises to the forehead and right upper limb. She underwent surgery for external fixation of plates and screws along with bone grafting of the fracture. The claimant developed arthrosis of the right ankle and had to seek medical treatment **in Martinique. The claimant's permanent impairment** of the right hind restricted her ability to walk long distances, standing for prolonged periods, walking on inclined surfaces or even wearing shoes with heels. In 2010 the sum of \$150,000.00 was awarded for general damages.

[11] An award for general damages is intended to compensate the claimant not only for the pain and suffering caused by the injury but also for the impact of the injury on his/her enjoyment of life. The court must have regard to the severity of the injury, whether it caused trauma and distress, the extent of treatment required, the age **and impact on the claimant's lifestyle and work**. Having taken all relevant matters into consideration, I am of the view that an award in the sum of \$160,000.00, being \$100,000.00 for pain and suffering and \$60,000.00 for loss of amenities, is a fair and reasonable award to compensate the claimant.

Loss of earning capacity or loss of future earnings

[12] The claimant seeks damages under this rubric using the multiplier/multiplicand method of calculation. The claimant both in the statement of claim and witness statement avers that he was earning \$60.00 a day as a carpenter assistant. Evidence of his employment was substantiated in a letter from Oscar Nelson, General Manager, Nelson & Associates.

[13] The defendant contends that the claimant appears to have amalgamated loss of earnings and loss of earning capacity which are separate and distinct concepts. In *Gravesandy v Moore* (186) 40 WIR 222 citing *Fairley v John Thompson*

⁶ SLUHCV2008/0551 delivered on 3rd August 2010.

(Design and Contracting Division) Ltd (1973) 2 Lloyds Rep 40 where Lord Denning MR at page 42 said:

“It is important to realise that there is a difference between an award for loss of earnings as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution in earning capacity is awarded as part of general damages.”

- [14] The conventional approach in an assessment of future loss of earning capacity is the use of the multiplicand and the multiplier method, taking the amount which the claimant has been prevented, by injury, from earning in the future (multiplicand) and multiplying it by the number of years during which he was expected to earn it (multiplier). To reach a figure for the award of a lump sum, the normal method of assessment which is used by the courts, is first to calculate, as accurately as possible, the net annual loss suffered, which is usually based on an average of the **claimant's pre-**accident ‘take-home’ pay. This is to be used as the multiplicand.
- [15] The claimant sustained the gun shot injury on 24th August 2007 and filed his claim on 18th February 2008. The claimant obtained judgment in November 2017, in excess of 10 years of the injury.
- [16] The claimant avers that he has been unable to return to pre-incident employment as a result of the injuries. He does a little fishing occasionally to help sustain his family. The medical report of 19th December 2007 speaks to late complications as a result of his injury to be chronic pain of his right knee due to arthritis and a permanent knee drop due to the popliteal nerve injury. He was described as having a 40% permanent disability. The permanent damage to the lateral collateral ligaments will produce an unstable knee joint with walking difficulties.
- [17] I accept the medical evidence and the information on his earnings at the time of the accident and the filing of the claim for the computation of an award for future loss of earning capacity. The claimant was 26 years of age at the time of the injury and the filing of the claim. He is now 36 at the time of the assessment but with the same complications since the injury. The permanent injury to the knee and

ligaments which is a critical and complex moving body part that carries the weight and movement of the claimant will definitely impact his future earnings. Wilkinson J in her judgment found that the claimant was no longer able to continue to work in the construction industry.

- [18] Using a multiplicand of his annual salary of \$14,400.00 i.e. (1200.00 x12) with a multiplier of 14, makes an award in the sum of \$201,600.00. A discount of 20% is made to take into account the fact that a lump sum payment is being made together with the vicissitudes and imponderables making a total award in the sum of \$161,280.00.

Special Damages

1. Loss of earnings

- [19] The claimant claims loss of earnings from the date of the incident on 24th August 2007 to 15th August 2008 at \$60.00 a day. The amount was pleaded and proved by evidence and is accordingly allowed in the sum of \$7000.00.

2. Costs of transportation

- [20] The claimant was discharged from the hospital on the 28th October 2007 and was required to undergo post-surgery treatment at the Ciceron Health Center daily to avoid infection to his leg. He claims for costs of transportation from 29th October 2007 to 31st December 2007 in the sum of \$2000.00. The defendant submits that the amount claim is not substantiated and a nominal sum of \$1000.00 should be awarded under this head.

- [21] It is trite law that special damages must be specifically pleaded and proved. When such evidence is not provided it is open to the trial judge to give consideration to an award of nominal damages in keeping with the Privy Council decision in *Greer v. Alstons Engineering Sales and Services Ltd*⁷.

⁷ [2003] UKPC 46 (19 June 2003).

[22] It is common knowledge that mini bus operators do not issue receipts to daily commuters. However, I am of the view that the amount claimed is excessive when considering that the claimant lived in Ciceron within the vicinity of the health center. In the circumstances, I will allow a nominal sum of \$1200.00 for transportation.

3. Medical report

[23] The sum of \$100.00 was pleaded and proved and is allowed.

4. Medication

[24] The claimant pleaded the sum of \$200.00 for medication which is not supported by receipt. I allow the amount claimed as a nominal sum which is not out of scale in keeping with the established principles by Bernard C J in Grant v Motilal Moonan Ltd et al.⁸

5. Future Medical Expenses

[25] Dr. Richardson St. Rose recommends future surgery which may partially stabilize **the claimant's knee joint**, and for an excision of the Neuroma. The total cost of the surgeries is \$4500.00, together with fees for the medical reports in the sum of \$500.00, making a total sum of \$5000.00.

[26] The claimant also produced a receipt for a knee x-Ray dated 7th March 2018 for \$120.00 and consultation fees on the even date in the sum of \$50.00, which are allowed, making a total sum of \$5,170.00 under this head.

Exemplary Damages

[27] In her judgment, Wilkinson J. said “the actions of Police Constable Mitchell being unacceptable and reprehensible, the Court believes that this is a case deserving not only of general damages for personal injuries but also of exemplary damages

⁸ (1988) 43 WIR 372.

to show the Court's disapproval of Police Constable Mitchell's action of shooting Mr. Hall."

[28] Counsel for the defendant suggests an award in the sum of \$7500.00. Counsel for the claimant seeks an award in the sum of \$10,000.00 in keeping with the decision of *Curvin Colaire v Attorney General of Commonwealth Of Dominica*⁹, and I so award.

ORDER

[29] Wilkinson J in her judgment directed that interest be awarded from 18th February 2008 until payment. In summary, it is ordered that the defendant shall pay the claimant the following awards:

- (1) General Damages in the sum of \$160,000.00 with interest at the rate of 6% from 18th February 2008 until payment in full.
- (2) Special Damages in the sum of \$8500.00 with interest at the rate of 3% from the date of the incident to the 8th of February 2008 and at the rate of 6 % from the 8th February 2008 until payment in full.
- (3) Loss of Future Earnings in the sum of \$161,280.00.
- (4) Future Medical Care in the sum of \$5,170.00.
- (5) Exemplary Damages in the sum of \$10,000.00.
- (6) No award of interest for items 3 to 5 in keeping with the decision of *Alphonso v Ramnath*.

Agnes Actie
Master, High Court

By the Court

Registrar

⁹ DOMHCV 2014/0079.