

EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2010/0247

BETWEEN:

FRANCILLIA SEVERIN

Claimant

and

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Appearances:

Ms. Diana Thomas for the Claimant

Mrs. Brenda Portland-Reynolds and with her Ms. Jan Drysdale for the Defendant

2018: September 5th

JUDGMENT

- [1] WILKINSON J.: Ms. Severin filed her claim form on 26th March 2010, and her amended statement of claim on 19th May 2010. Therein she alleged that on 7th October 2007, she suffered personal injuries to her ankle due to the negligence of a Police Officer who without probable cause or good reason caused her to be injured by shooting her in her ankle while she was peaceably attending to her business in or about the Streams of Power Tabernacle Church at Waterworks Road in the Quarter of Castries. By way of relief she sought (a) special damages in the sum of \$820.00, (b) general damages, (c) interest, (d) costs, and (e) further or other relief.

- [2] By letter dated 8th April 2009, the Attorney General, under the hand of the Solicitor General, informed the Counsel for Ms. Severin, Ms. Samantha Charles, that the Government was aware of and had informally agreed to compensate all affected persons on presentation of evidence of injury and on submission of an award which it was felt compensated the injury suffered. It was stated that the Attorney **General welcomed and awaited Ms. Severin's offer** for settlement.
- [3] It appears that although there was an invitation to settle the damages, the Parties were not able to do so.
- [4] On 19th August 2010, Ms. Severin applied for judgment in default of defence and on 19th October 2010, judgment in default of defence was entered for Ms. Severin with damages to be assessed.
- [5] On 15th November 2011, Ms. Severin filed her application supported by affidavit for assessment of damages.
- [6] The Attorney-General was given an opportunity to file an affidavit in reply. None was filed.
- [7] Ms. Severin resides at Redit in the Quarter of Gros Islet. She was born on 26th February 1960, and was 47 years of age at the time that she was shot in her ankle by a Police Officer. She, prior to being shot earned a living thru working at 5 jobs and which were bartender/waitress, housekeeper (for 3 persons), and babysitter. She had no particular ailments recorded prior to being shot.
- [8] On 7th October 2007, Ms. Severin attended church service at the Streams of Power Tabernacle Church at Waterworks Road in the City of Castries. Church service concluded at approximately 12.00 p.m. Ms. Severin volunteered for after service church activities and she particularly enjoyed every Sunday as well as on special occasions the underprivileged children feeding program. On that day, she

was at the head of a line for feeding the children. She and the children were singing the **children's song "Green plates and whites plates"** when at some point she saw people running in the church yard shouting **"Gun shots!"** She was about to take steps to ensure the children's safety when she saw one (1) child in the line acting hysterically and heard the children screaming. She then heard a loud sound and felt a sharp pain to her right ankle. She looked at her right leg and saw blood gushing from it. She was shocked and frightened. She started screaming and shouting **"My leg, my leg!"**

- [9] **Ms. Severin's** daughter who was also in the church yard, rushed to her aid. Her daughter and another lady helped her to the church steps. They tried to stop the bleeding.
- [10] Ms. Severin saw people who according to her, were running for their lives and she also saw Police Officers in SSU uniform. She did not know who shot her at the time but none of the Police Officers came to her aid.
- [11] Ms. Severin says that she was in excruciating pain but nevertheless inquired about the children. She learnt that the child who was acting hysterically and another lady were also shot. Three (3) of them being Ms. Severin, the hysterical child and the other lady who had also been shot were all sitting on the church steps when one (1) of the Police Officers in SSU uniform came around to them and said **"Sorry, sorry."** He did not address any one of them in particular.
- [12] An ambulance arrived within about 10 minutes. Ms. Severin, the child, and the other injured lady, together with 3 other persons were taken on board the ambulance. The ambulance took all on board to the Victoria Hospital in the City of Castries.
- [13] At the hospital, Ms. Severin was seen and attended to by nurses in the emergency room. She was made to lie down on a bed. Her excruciating pain continued and

she was given some minor painkillers. A nurse who attended to her, tried to stop the bleeding. She administered a tetanus injection on **Ms. Severin's arm** and then gave her two (2) more pills. About half an hour later, the nurse gave Ms. Severin a second injection in her buttocks. She did not know what medication was in the second injection.

[14] Before another medical profession could approach Ms. Severin, a man in plain clothes and identifying himself as a Police Officer who dealt with incidents involving the Police, approached her hospital bed. He asked Ms. Severin some questions which she answered as best she could. He appeared to write down all of her responses in his notebook and then he left. She has never seen that Police Officer again.

[15] Subsequently, Ms. Severin was taken to another room in the hospital and there her right foot was x-rayed. After the x-ray, Ms. Severin was seen by Dr. Richardson St. Rose. He told her that the bullet had not exited and that she would have to undergo surgery to remove it. Dr St. Rose requested that Ms. Severin return in 10 days for surgery to remove the bullet.

[16] Surgery occurred as scheduled on 17th October 2007. The surgery was carried out under general anesthesia. Dr. St. Rose confirmed that the bullet had been successfully removed. Ms. Severin was discharged 18th October 2007, with a cast on her foot. On discharge Ms. Severin was advised to return for outpatient visits to **the Victoria Hospital and Dr St. Rose's office.**

Medical Reports

[17] Between October 2007, and 18th April 2011, Ms. Severin was seen in connection with her injury by Dr. Richardson St Rose, Dr. Tamunotonye Davids and Dr. Horatius Jeffers. Their various reports were disclosed to the Court.

- [18] Dr. St. Rose, consultant orthopaedic surgeon, in his medical report dated 4th December 2007, stated that Ms. Severin had received a bullet wound to the back of her right ankle on 7th October 2007. He said that the point of entry was the medial aspect of the flexor compartment of the ankle and the bullet lodged just posterior to the capsule of the ankle joint. He recorded the occurrence of surgery. He said that there was no tendon injury but that some nerves to the heel were damaged and so rendering numbness to part of the heel. He said that this numbness would be permanent. He also said that Ms. Severin would suffer (a) temporary partial disability of 50 percent over 3 months and during this time she would be unable to work. He believed there would be permanent disability of 0.5 percent due to the numbness and residual stiffness.
- [19] At 18th February 2008, Dr. Tamunotonye Davids, House Officer at the Victoria Hospital, wrote a medical report and it was stated to be on behalf of Dr. Richardson St. Rose. He cited the gun shot injury on 7th October 2007, that the entry wound measured 0.5 cm medial border of the right ankle joint distal to the medial malleolus and no exit wound was noted. He stated that radiological findings revealed pellet posterior aspect of the right ankle joint. The bullet he recorded was extracted 10 days later and Ms. Severin she was discharged the same day with analgesics and antibiotics. She was to continue to follow up at the outpatient clinic.
- [20] **Ms. Severin states that Dr. Davids' statement that she was discharged the same day was incorrect.** She spent one (1) night in the hospital. This was due to her having had general anesthetic, and secondly, she recalls that the following day when she was discharged, a Police Officer known to her only as Police Officer St. Juste, and who had driven her to the hospital the previous day, asked her for her national identification card so that the payment for the hospital charges could be processed through her National Insurance account. She protested his request and expressed the view that the Police department should pay the bill and not the National Insurance Corporation. She did give Police Officer St. Juste her card for him to record the details.

- [21] Ms. Severin stated that soon after she went back to work due to her continuing to have problems with her right foot and which included swelling of her foot and leg, inability to stand for long periods she was advised to seek a second opinion from Dr. Horatius Jeffers.
- [22] Dr. Horatius Jeffers, consultant orthopaedic surgeon, prepared a medical report dated 17th September 2008, this being 1 year on from when Ms. Severin was shot. He recorded on the report: (a) that it was prepared for the information and convenience of Ms. Severin and her instructing solicitor; (b) the documents available to him were x-rays from the Victoria Hospital; (c) that Ms. Severin had told him that she had loss 4 months' work due to her injuries; (d) the history about how she sustained the injury, the treatment to date being surgery to remove the **"foreign body", tetanus immunization, and pain medication**; (e) **Ms. Severin's** present condition and which saw her complaining about ongoing pain, swelling of the right foot and ankle which was aggravated by prolonged periods of standing, walking and using closed footwear. She also had sensitivity of the sole of her right foot. Ms. Severin was also said to be embarrassed by the scar and swelling of her right foot when she was in social environments. She was also precluded for all weight bearing recreational/sporting activities during the period when she was unable to work.
- [23] Dr. Jeffers opinion was that:
- (i) The injuries suffered were consistent with penetrating trauma of a moderate to severe degree of severity and was consistent with injury from a projectile such as a firearm gunshot injury;
 - (ii) Ms Severin at 11 months post the injury, her injuries could not be deemed to have reached maximal medical improvement at the time for the purpose of impairment assessment and disability evaluation with regard to employment;
 - (iii) Ms. Severin would not have been able to perform the tasks associated with her occupations as a bartender, housekeeper for a minimum of 4 months post injury;

- (iv) The ongoing recurrent episodes of right ankle and foot swelling which is **maximal at the end of the day's activities is expected to continue for some 12 to 18 months post injury** before resolution, however, in the majority of patients, it is not unusual that some degree of permanent enlargement of the injured ankle ensues following the period of time, this swelling, however, does not usually lead to permanent impairment of ankle and foot action;
- (v) Ms. Severin did appear to have pre-existing varicose veins of the right leg, this condition often results in some degree of leg/ankle and foot swelling in the absence of injury, the presence of the varicose veins was very likely to have contributed to the swelling being experienced by Ms. Severin;
- (vi) The permanent enlargement of the foot and ankle along with the hypertrophic (raised and unsightly scar) of the injury may well constitute a cosmetic defect;
- (vii) The area of numbness and heightened abnormal sensation of the sole of the right foot is likely due to an incomplete injury to the tibial nerve which subserves sensation of touch, pain, vibration and spatial orientation to the sole of the right foot, the injury is likely to have been inflicted by the projectile which on x-ray examination post injury, is located in the same region of the said nerve;
- (viii) Assessment by a neurologist along with specialized tests in the form of nerve conduction studies/EMG is advised to determine in an objective way the extent and presence of the suspected injury to the right posterior tibial nerve at the level of the ankle, as this appears to be the proximate cause of the ongoing right foot numbness.

Dr. Jeffers concluded that at the time of the report he was unable to predict the extent of anticipated recovery of function of the nerve, recovery of the nerve function may take a minimum of 12 to 18 months before the full extent possible is realized. A further evaluation in 12 months is recommended to assess the extent of recovery if any and to determine the impairment to right lower limb function consequent on the residual nerve dysfunction if present.

Dr Jeffers closed his report by stating that a final report on the percentage of impairment and possible adverse impact on continuing employment of Ms. Severin as a bartender/housekeeper will be issued when the results of the above-mentioned evaluation were available.

[24] Dr. St. Rose prepared a second report dated 18th April 2011, this being 3 years 7 months on from when the injury occurred. He recorded that Ms. Severin was now 51 years of age; he had reviewed her condition periodically, at least yearly, over the prior 3 1/2 years. He stated that as per his first report, branches of the medial plantar nerve supplying part of the heel and area of about 9 square inches over the inner aspect of her foot were damaged. The areas supplied by those nerves were permanently numb. He said that because the injury involved the right ankle joint, there was chronic pain of mild to medium, and occasional swelling about the ankle region. The resulting permanent disability was reassessed at about 10 percent.

[25] Ms. Severin said that although Dr. Jeffers recommended further investigation of the numbness in her my ankle, nothing further was done because she could not afford the costs of the recommended tests.

[26] Ms. Severin said that she would like to be able to pursue the recommendations of Dr. Jeffers.

[27] Under cross-examination Ms. Severin admitted to the varicose veins recorded by Dr. Jeffers. She says however, that before she was shot they were only like black marks behind her leg but after she got shot, then they started getting big and swelling.

Employment

[28] Ms. Severin described herself as being a hard worker who was able to hold down 5 jobs: (a) full time as a bartender/waitress **at the restaurant "Memories of Hong**

Kong” where she earned approximately \$1800.00 monthly inclusive of average tips of \$400.00 per month; (b) part-time housekeeper for Justice E. Anthony Ross earning \$180.00 per week, (c) part-time housekeeper for Ms. Welcome St. Rose earning \$875.00 per month, (d) part-time housekeeper for Mrs. Gemma Johnson earning \$1,500.00 per month, and (e) part-time upon request, providing babysitting services for Mr. & Mrs. Johnson earning approximately \$200.00 per week. These sums total income of approximately \$5,695.00 per month.

[29] Ms. Severin disclosed documentation to support her employment claim and they were:

- (i) Letter dated 3rd April 2008, issue by Memories of Hong Kong which confirmed employed with restaurant for the previous 9 years as bartender with monthly salary of \$1,800.00. Ms. Severin was described as hardworking, dedicated, responsible and trustworthy.
- (ii) Letter dated 19th May 2008, issued by Justice E. Anthony Ross which confirmed employment as housekeeper from November 2006, with weekly salary of \$180.00 per week. He recorded that she had been absent for 3 months during which she was recovering from an injury and connected surgery.
- (iii) Letter dated 15th May 2008, issued by Ms. Welcome St. Rose and which confirmed that Ms. Severin was employed as housekeeper with her from October 2004, with a monthly salary of \$875.00.
- (iv) Letter dated 19th May 2008, issued by Mr. Martin Johnson & Mrs. Gemma Johnson to the Loans Department, Bank of Nova Scotia. This letter referred to *Ms. Fania Severin* as their employee, who was employed with the family for 5 years and with a monthly salary of \$1,500.00.

[30] Ms. Severin gave a breakdown of how she managed her time to cover all of her jobs. She said that (a) she would go to Justice Ross at 8.00 a.m. and leave between 10.30 - 11.00 a.m. 3 days a week; (b) she would go to Ms. St. Rose at 8.00 a.m. and leave at 12.00 p.m. 3 days a week; (c) she would go to Mr. & Mrs.

Johnson 3 days per week at 1.00 p.m. and leave at 4.00 p.m. and from their house she would walk over to Memories of Hong Kong for 4.30 p.m.; (e) she worked daily at Memories of Hong Kong from 4.30 p.m. to 10.30 -11.00 p.m.

[31] Ms. Severin reported to work on 17th January 2008, this being approximately three (3) months after she was shot. Immediately upon her return to work on 17th January 2008, she began to suffer with swelling of her right leg and foot. She could not stand for very long periods. All of her jobs required her to be on her feet for long periods of time. Prior to the injury she had functioned in all my previous jobs without incident prior to the shooting.

[32] Ms. Severin tried to continue with her 5 jobs but could not. She soon gave up her bartending/waitress job with Memories of Hong Kong and Justice Ross and reduced her working hours with Mr. & Mrs. Johnson. She was considerably less efficient at work having to take frequent breaks to rest her right leg and foot because of constant pain and swelling of her ankle area.

[33] Ms. Severin says that due to her inability to work in the same way as prior to being shot on 7th October 2007, she has suffered a substantial loss of income and breaks it down as follows:-

- (i) Unable to work from 8th October 2007 to 16th January 2008; her average earning before that she calculated at \$5,295.00 per month and therefore she suffered a loss of \$15,885.00 for October 2007 to January 2008. National Insurance Corporation paid her \$1,900.00 for 3 months against that loss.
- (ii) She resumed employment with Mr. & Mrs. Johnson, Ms. St. Rose and Justice Ross but due to pain and suffering from the injury she was prevented from continuing those jobs. At June 2008, she gave up those jobs because of her leg.
- (iii) From June 2008 to present (November 2011 – date of her affidavit) there was a loss the income from Ms. Rose, Mr. & Mrs. Johnson and Justice Ross. She calculated her loss with these employers as (a) up to July 2010,

37 months of work with Ms. St. Rose at \$875.00 per month- \$32,375.00; (b) up to July 2010, 37 months of work with Mr. & Mrs. Johnson at \$1500.00 per month- \$55,500.00; (c) 148 weeks (2.84 years being June 2008 to January 2011) work with Justice Ross at \$180.00 per week - \$26,640.00.

She recorded the total loss of income as \$76,100.00, but the Court calculated the figures to total \$114,515.00.

[34] According to Ms. Severin, the injury has caused her income to decrease by \$3,495.00 per month or \$41,940.00 per year. For the same period, if she had not been injured, she would have been earning her full income and whatever increases she would have been entitled to over the years. She should have in fact earned \$5,295.00 monthly or \$63,540.00 per year. A 66% drop in income. She believes that her future earnings prospects will be 66% below what she would have earned without injury. (The Court observes that this sum is short \$400.00 without explanation - her original claim of \$5,695.00 per month).

[35] Ms. Severin said that from the prognosis and the way she feels on a daily basis, she knows that the injury has affected her working life. She is aware that the normal retirement age is 65 years old. However, because she is constantly required to take breaks, she may not last until that age to retire. Her employers were patient with her because they had expressed that she was a good worker. She was willing to try her best but she believed that even putting aside her part-time employment, her full time employment within the tourism industry would also been effected.

[36] In relation to the claim of loss of income from Justice Ross, Ms. Severin under cross examination admitted that (a) she was at England with her husband for 6 months of the period she claimed to have worked with Justice Ross, and (b) Justice Ross was no longer resident at Saint Lucia on her return from England. She eventually said that she stopped working for him in June 2009.

- [37] **The issue of Ms. Severin's marriage on her claim for loss wages was also cross-examined.** She married on 20th September 2008, (approximately 11 month 2 weeks post the injury). In her affidavit Ms. Severin said that after the wedding she **moved to England "permanently"** for one (1) year but only stayed for 5 months. Under cross-examination she said that she stayed 6 months and never returned to England.
- [38] When asked under cross-examination if it was not her intention to stay at England, Ms. Severin then contradicted her affidavit evidence by saying: - **"I don't remember."** She then said that she went to England for a couple of months, she had a visa for 6 months, and spent almost 6 months. When asked if she was now saying that the plan was never to stay in England, with her husband, she **answered "No"**.
- [39] It was put to Ms. Severin that if when she left permanently for England, would it not be correct that she would have resigned from her various places of employment? She responded that she had not resigned. She said that she returned from England in September and returned to work in October. She said that she resumed working with Ms. St. Rose for 2 days a week. However, in 2009, when she took part-time jobs, she did not go back to Ms. St. Rose.
- [40] Under cross-examination it was put to Ms. Severin that in her affidavit she said that she reduced the hours with Mr & Mrs. Johnson and now she was stating that she did not go back to work, and so which was correct? Ms. Severin said that she could not remember.
- [41] Under cross-examination there were questions about tax payments and payments to the National Insurance Corporation. Ms. Severin said that she never paid tax, and when she was working that she did pay the National Insurance Corporation. There were questions in relation as to why if her salary was as claimed \$5,295.00 per month, then how was it she only received over 3 months of \$1,900.00 in total

sick benefit from the National Insurance Corporation? It was put to her that if what she said was true, then she would have been entitled to 65 percent of her monthly salary (i.e. \$3,441.75) had she paid the National Insurance Corporation based on her earnings. Ms. Severin at the end said that only Memories of Hong Kong paid the National Insurance Corporation the sum due and the tip amount was not included in the calculation for the National Insurance Corporation.

- [42] In relation to the Memories of Hong Kong salary, Ms. Severin sought to clarify the amount stated and said that while the letter stated her salary as being \$1,800.00 per month, the breakdown was salary of \$1,100.00 and \$700.00 was service charge. Sometimes the service charge could be higher.

Life Post the Injury

- [43] On 20th September 2008, this being approximately 1 year post the injury, Ms. Severin married her husband, a person with whom she had had a relationship for approximately 4 years. Her husband at the time of marriage resided full-time at **England. After the wedding she moved “permanently” to England** for one (1) year however, she and her husband only lived together for approximately five (5) months.
- [44] According to Ms. Severin, during her time at England with her husband, he complained about her not being able to wear high heels as she had in the past, **that she had a “big leg” and that she was not making any effort to improve** her situation.. He used to tell her that he felt bad for her when they went out socially **and that people would ask him questions all time about her ‘big foot’**. Her husband **eventually left her. She feels that her ‘big foot’** was the reason that she was no longer wearing a wedding ring and why her husband had left her.

[45] Ms. Severin says that her life has changed in several ways since the injury. She enumerated some of the ways which she no longer enjoys her life and they were: (i) she has three grandchildren - she is no longer able to play with them as she used to; (ii) she has given up the volunteer work that she engaged in; (iii) she used to be an avid runner and she did this as a fundraising activity, and (iv) she use to run for exercise at 5:00 am around the Vigie airport.

[46] According to Ms. Severin, the bullet wound and injury has left her with an unsightly scar on her lower leg and she is keenly aware of the scar. In addition to which she sometimes limps; the pain is constant and she continues to experience much swelling of her right leg and foot. She says that she cannot even step on a coin without feeling it in my ankle.

[47] She continues to suffer the shame of a “big foot”. **Even if people don’t say anything to her, she often can see and feel their stares and overhear them talking about her “big foot.”**

The Law

[48] An assessment of damages is conducted pursuant to CPR 2000 Part 16. The Court has also to bear in mind Part 8, rules 8.7 and 8.9 which sets out the additional requirements with which Ms. Severin must comply her claim being in the nature of a personal injury claim.

[49] An award of damages for personal injuries is made pursuant to the Civil Code of the Revised Laws of Saint Lucia Cap.4.01 (“the Civil Code”) **articles 985 and** which provides:

“985. Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising.”

[50] Mc Gregor on Damages¹ states that the object of an award of damages is:

“9. The object of an award of damages is to give the plaintiff compensation for the damage, loss or injury he has suffered. The heads or elements of damage recognized as such by the law are divisible into two main groups; pecuniary and non-pecuniary loss. The former comprises all financial and material loss incurred, such as loss of business profits or expenses of medical treatment. The latter comprises all losses which do not represent an inroad upon a person’s financial or material assets, such as physical pain or injury to feelings. The former being a money loss is capable of being arithmetically calculated in money, even though the calculation must sometimes be a rough one where there are difficulties of proof. The latter however is not so calculable. Money is not awarded as a replacement for other money, but as a substitute for that which is generally more important than money; it is the best that a court can do.

10. The statement of the general rule from which one must always start in resolving a problem as to the measure of damages, a rule equally applicable to tort and contract, has its origin in the speech of Lord Blackburn in *Livingstone v. Rawyards Coal Co.*² He there defined the **measure of damages as “that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.” This statement has been consistently referred to or cited with approval, or restated in similar language.**”

[51] When considering an award of general damages, the locus classicus remains *Cornilliac v. St. Louis* (1965) 7 WIR 491. Therein, Wooding CJ at p. 494 said that on an assessment of a general damages the heads under which an assessment should be determined ought to include (a) the injuries inflicted and the loss or impairment of his functional capacity before making such recovery as he has; (b) the physical disabilities which he will have to bear for the rest of his life, (c) the pain and suffering he has had to endure, (d) the loss of amenities of which he has been deprived, and (e) the loss of pecuniary prospects in respect both of his employment and of his retirement benefits.

¹ 15th edition para.9 page [7] and [8]

² (1880) 5 App. Cas..

[52] The Court noted that it was also provided by Ms. Severin's Counsel with authority on exemplary damages. Exemplary damages were **not pleaded** in Ms. Severin's amended statement of claim. The Court will therefore not consider or address such an award.

[53] In regard to Ms. Severin and the considerations of Cornilliac identified as (a) to (d), the Court considered the case of Moore v. Beharry³ where there was a fracture to the heel bone and in 1972 the award was TT\$2,500, and this was updated in 2002 to TT\$50,500.00/EC\$25,250.00; Chong Pong v. BWIA⁴ where there was a fracture of an ankle, loss of amenities and in 1970 the award was TT\$4,500.00 and this was updated in 2002 to TT\$84,342.00/EC\$42,171.00; Seerattan v. Ackbarali⁵ who suffered a bi-malleolar Potts fracture of the right ankle, at time of hearing was still suffering painful limitation of movement of the ankle, it became swollen after prolonged walking or standing and there was partial disability at 15 percent, in 1976 the award was TT\$5000.00 and this was updated in 2010 to TT\$85,119.00/EC\$42,554.50.

[54] In regard to the consideration of Cornilliac identified as (e), the Court is guided by the decision delivered on January 16th 2018, from our Court of Appeal – **BVIHCVAP2015/0019 Steadroy Matthews v. Garna O'Neal**. Therein Michel JA said:

“[38] The multiplicand is the net annual amount which the injured party would have been earning but for her injuries, less any amount which she is capable of earning in the future. Where the injured party is in salaried employment and is rendered completely incapable of working by the injury, the calculation of a multiplicand is fairly easy. Where, however, as in the present case, the injured party was self-employed and is capable of doing some amount of income-earning, the calculation of the multiplicand is fairly difficult. The calculation, however, is a factual determination to be made by the finder of fact, which in this case is the master who undertook the assessment of damages.

³ Daly's on Damages p.96 (Trinidad & Tobago case)

⁴ Ibid. 91

⁵ Ibid. 90

- [39]
- [40] The multiplier is the amount by which the net annual income should be multiplied in order to arrive at the quantum of the award for loss of future earnings. This is determined by ascertaining the number of years which the injured party would have been earning that income but for her injuries. According to McGregor on Damages⁶, '(t)he starting point in the calculation of the multiplier is the number of years that it is anticipated the claimant's disability will last; the calculation falls to be made from the date of trial.'
- [41] In the case of Pritchard v. J.H Cobden⁷, the English Court of Appeal held that damages for loss of earnings for a living claimant should be assessed as special damages for the earnings loss between injury and trial, with a calculation of the future loss earnings from trial by selecting a multiplier from the date of trial to compensate the claimant for the likely loss of earnings for his future working life
- [42] In the seminal case of Alphonso v. Ramnath, this Court – having reviewed the principles to be applied in determining the multiplier to be used in assessing loss of future earnings in personal injury claims, and having considered comparable awards – adjusted a multiplier of 15 set by the High Court and substituted of 12 in arriving at the award to be made for loss of earnings to a 45 year old man with an anticipated working life of 20 years between trial and retirement. Adopting the mathematics of Satrohan Singh JA, who delivered the principal judgment in the Court of Appeal, the multiplier of 7.74 should be discounted by 40% and yield a discounted multiplier (rounded to the nearest decimal point) of 4.6.
- [43] ...
- [49] In the case of Blamire v. South Cumbria Health Authority⁸ the English Court of Appeal held that the trial judge was entitled to reject the multiplier-multiplicand approach in assessing the injured **party's future loss of earnings, given the number of uncertainties** in that case as to the amount the injured party would have earned if she had not been injured, as well as the likely future pattern of her earnings. The judge accordingly decided, and the Court of

⁶ See para. 38-100 19th ed.(2014)

⁷ [1988]Fam.22

⁸ [1993] PIQR; [1992] Lexis Citation 2222

Appeal upheld his decision, to award a global sum for loss of **future earnings.**" (Emphasis is mine)

Findings and Analysis

- [55] There was no contest as to how Ms. Severin was injured; she was shot by a Police Officer. From the evidence, the Court believes the shooting to be accidental. That of course does not rule out negligence and liability. A point well understood by the **Solicitor General's letter of 8th April 2009.**
- [56] The real contest in these proceedings is how much money should Ms. Severin receive for (a) special damages for loss of wages, (b) loss of future income, and (c) general damages.
- [57] The Court deals first with general damages for items (a) to (d) of Cornilliac.
- [58] It is not to be doubted that being shot would have been a traumatic and frightening experience and perhaps even more so when it occurs without threat or warning and **"out of the blue"**. **Then of** course, the bullet did not exit the wound and so Ms. Severin was forced to experience the continued presence of the bullet in her leg for an additional 10 days before surgery. While the wound itself healed, what was happening underneath was a very different story. There was permanent nerve damage leading to numbness. According to Dr. St. Rose an area of about 9 square inches was affected by the nerve damage. This is quite a large section of any area of the ankle or foot.
- [59] It is to be noted that none of the medical reports contested Ms. Severin about the swelling of her foot and leg, numbness and difficulty that she would have in trying to pursue her previous line of work, with an impacted leg and foot.
- [60] Dr. St. **Rose's second report at 18th April 2011,** and which was 4 years on from when Ms. Severin was shot, finds that from intermittent examinations over the

years, there was still intermittent swelling and there was to be expected chronic pain of mild to medium strength and so too occasional swelling.

[61] **As to the swelling, the Court is not informed by Dr. St. Rose's report if the swelling** would be greater depending on the type of work employed in, e.g bartender or housekeeping.

[62] There was of course a permanent scar, no measurement was provided about the size of the scar.

[63] During the period post-**surgery and beyond, Dr. Jeffers' medical report** was helpful. He stated that with the type of injury Ms. Severin sustained that she would not have been able carry out her various jobs as bartender, housekeeper for a minimum of 4 months. The evidence was that Ms. Severin returned to work after 3 months. He said that with the type of injury, at the end of daily activities, swelling was expected to continue for between 12 – 18 months. He also noted that it was not unusual for there to be permanent impairment.

[64] Dr. St. Rose assessed **Ms. Severin's permanent disability at 10 percent.**

[65] Ms. Severin evidence as to her state at time of being shot and beyond was supported by medical evidence.

[66] Against this background, Counsel for the Attorney General raised the matter of **Ms. Severin's varicose veins. The Court had no evidence before it that Ms. Severin ever suffered with her varicose veins and according to her, at the time there were merely "black marks" against her skin. Indeed when she was shot, she was standing singing and feeding children. There is too the general principle that a tortfeasor must take his victim as he finds him. The Court will have no regard to the matter of Ms. Severin's varicose veins.**

- [67] The Court taking into consideration the awards cited, will award Ms. Severin \$45,000.00 in general damages.
- [68] This now bring the Court to the award of special damages. There is no contest on the amounts expended for medical care and reports. This total was \$820.00.
- [69] The Court will award Ms. Severin special damages for medical expenses incurred in the sum of \$820.00.
- [70] This brings the Court to the contested special damages to be measured for loss of earnings up to trial and loss of future income measured from trial onwards. In this instance, judgment in default was entered on 19th October 2010, and so any measure of special damages for loss of wages would be up to this date. Loss of future earnings would be measured from 20th October 2010, onwards.
- [71] **In this regard, the Court accepts Ms. Severin's evidence that she was no longer** comfortably able to work as a bartender/waitress and which job required her to be on her feet from 4.30 p.m. thru to 10.30 -11.00 p.m., 6 – 6 1/2 hours, be it mixing drinks or serving drinks or working as a waitress serving tables at the restaurant.
- [72] **In this regard, the Court also accepts Ms. Severin's evidence that her job as a** housekeeper was also impacted. Housekeeping generally involves moving around a house sweeping/vacuuming, mopping floors, cleaning bathrooms, cleaning kitchens, dusting furniture, doing laundry, making beds, other dusting, and so forth. All jobs requiring a person to be on their feet as they carry out these housekeeping duties.
- [73] At the assessment hearing, Counsel for the Attorney General had proposed to challenge Ms. Welcome St. Rose's letter on wages for Ms. Severin, and at the request of the Attorney General, Ms. St. Rose was twice summoned for cross-examination and failed to appear on both occasions.

- [74] Counsel for the Attorney General sought to submit that the non-appearance of Ms. St. Rose should somehow be held against Ms. Severin. The Court does not agree. The Court could have been asked to use its coercive powers to bring Ms. St. Rose to Court. Rather, Counsel said that they had been instructed to proceed without cross-examination of Ms. St. Rose and conclude the matter.
- [75] At the assessment hearing, the letter of Mr. & Mrs. Johnson was contested. Counsel for Ms. Severin under examination-in-chief asked Ms. Severin, in relation **to who was the letter and she responded: "Fania Severin". Counsel asked who are they writing about and she said: "Fania Severin."**
- [76] Counsel for the Attorney General objected to the line of questioning stating that Ms. Severin was seeking to clarify rather than amplify pursuant to CPR 2000 rule **29.9. Further, the knowledge about "Fania Severin" was within the knowledge of Ms. Severin from inception of the case.**
- [77] The Court agrees with Counsel for the Attorney General that what was occurring was clarification and not amplification pursuant to rule 29.9(a). In the first instance the letter was not addressed as these letters usually **are "To Whom it may concern" but rather to the Bank of Nova Scotia and so this suggests that it was of some other use.** Secondly, the letter was issued 2 years prior to the suit and so if there was any issue as to a mix-up of names, there was ample time to address the name in the letter **and secure a proper letter addressed as is usual "To Whom it may concern" for use in the proceedings.**
- [78] The Court will therefore not consider the letter of Mr. & Mrs. Johnson in its calculation of loss wages.
- [79] This brings the Court to the measure of loss of wages to be calculated up to date of judgment 19th October 2010.

- [80] The calculation of wages up to judgment and in the future has the added **complication of Ms. Severin's marriage. She got married at 20th September 2008**, approximately 11 months 2 weeks post the injury.
- [81] The marriage itself is of course not a complication. However, the complication is that according to Ms. Severin's **affidavit, she moved "permanently" for 1 year to England**. There was apparently a breakdown of the marriage and Ms. Severin says that she returned to Saint Lucia after staying at England for between 5-6 months. The Court is not exactly clear as to when she departed Saint Lucia for England.
- [82] Ms. Severin said that she returned in September and sought to return to work in October. The Court believes she is speaking of October 2009, because she said that in 2009, she took part-time jobs. Working backwards, it appears that she might have travelled to England between February – March 2009.
- [83] Regardless of how long Ms. Severin stayed at England, to **the Court's mind, a bit of crucial evidence that was not laid before the Court was what were the arrangements with any of her employers before she departed for England "permanently" for 1 year as to her having a job on her return.**
- [84] The absence of an employee for 5 months or 1 year can have a serious impact on an employer and in most cases would call for alternative arrangements to be made.
- [85] Bearing in mind that Ms. Severin appeared to have made plans to reside at England with her husband, the Court believes that it can at best only count her average loss of income from October 2007, to February 2009.

[86] The Court therefore calculates her loss of income from October 2007 to February 2009 using for practical purposes only, the figures she was able to prove for her 2 part-time jobs and fulltime job as follows:

- (i) Justice Ross – October 2007 to February 2009, 72 weeks @ \$180.00 per week for \$12,960.00 less wages for period January 2008 to June 2008 (when she resumed work), 24 weeks @ \$180.00 per week for \$4,320.00 – net \$ 8,640.00.
- (ii) Ms. St. Rose – October 2007 to February 2009, 18 months @ \$875.00 per month for \$15,750.00 less wages for the period January 2008 to June 2008 (when she resumed work) 6 months @ \$875.00 per month for \$5,250.00 – net \$10,500.00.
- (iii) Memories of Hong Kong – October 2007 to February 2009, 18 months @ \$1,800.00 per month for \$ 3,2400.00 less wages for the period January 2008 to June 2008 (when she resumed work) 6 months @ \$1,800.00 for \$10,800.00 – net \$21,600.00. Total sum \$40,740.00 less \$1,900.00 paid by the National Insurance Corporation for net \$38,840.00.

[87] The Court will award Ms. Severin as special damages for loss of income up to judgment the sum of \$ 38,840.00.

[88] Looking now at what to award Ms. Severin for loss of future income, Ms. Severin was 47 years when she was shot. She was 50 years when judgment was entered with an average remaining working life of another 15 years if she were to retire at 65 years. The Court does not believe that without some proof of promised employment from an employer upon return from England to Saint Lucia, that it can make any specific calculation for future loss of income. The Court is more inclined given the recorded medical evidence and acknowledging that the injury would have some impact on the nature of employment that Ms. Severin can now engage in, to award a sum using the Blamire approach and award a global sum. The Court is also guided by the principles in *Alphonso v. Ramnath* on the discount to be applied when awarding a lump sum.

[89] As to loss of future income and using the Blamire approach, with the discount called for in Alphonso v. Ramnath, the Court is prepared to award Ms. Severin \$25,000.00 for loss of future income.

[90] **Court's Order**

1. The Attorney General shall pay to Ms. Severin as follows:
 - (i) \$45,000.00 in general damages, (ii) \$820.00 in special damages, (iii) special damages for loss of income up to trial \$38,840.00, (iv) \$25,000.00 for loss of future income.
2. Interest is awarded at the rate of 6 percent on all sums with interest on general damages being from date of service of the claim and on other awards from date of judgment until payment in full.
3. Prescribed costs is awarded to Ms. Severin.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar