

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

GRENADA
SUIT NO. GDAHCV2016/0330
BETWEEN:

DIAMOND MUNRO (by her next friend
And Sister LaTonya Munro)

Claimant

and

DIAMOND ALEXANDER

First Defendant

DEVON HELLAIRE

Second Defendant

Appearances:

Mr. Francis Williams for the Claimant

Mrs. Anande Trotman-Joseph for the Defendants' Insurers

The Defendants present and unrepresented

2019: May 23

June 4

1. **BURNETTE, M** (Ag.): This is an assessment of damages following a default judgment entered against the Defendants on 20th December, 2016. The claim arises out of a motor vehicle accident in which the Claimant, Diamond Munro suffered severe personal injuries after she was struck by a vehicle driven by the First Defendant and owned by the Second Defendant. The accident occurred on 15th September, 2015.
2. Diamond Munro was born on 8th January, 2008 (according to the medical report of Dr. Kester Dragon), although in the Statement of Claimant, the Claimant who is represented by her next friend and sister, pleaded that Diamond was born on the 11th January, 2007. Diamond gave a witness statement filed on 15th January, 2019 in which she states that she was 7 years old at the time of the accident. The Court will accept that Diamond was born in 2008 as stated in the medical report and confirmed by Diamond herself who was 11 years old at the date of assessment.
3. The medical report of Dr. Dragon confirmed that Diamond suffered the following injuries:
 - Almost complete amputation through right distal leg
 - Complete displaced fracture of tibia and fibula shafts with loss of bone
 - Contusion on the right side of the face
 - Hematoma to tongue
 - Open fracture of right tibia and fibula
4. The medical report also indicated that on arrival at the General Hospital, Diamond was alert and well oriented and her memory was intact. She was taken to the Operating

Theatre for surgery. Dr. Dragon indicated that the wound was found to be dirty with gravel and other material and the leg fractures were reduced and maintained with an external fixator, while her other soft tissue injuries to the face were managed by a Facial Surgeon. Diamond was hospitalized for 17 days and was followed up as an out-patient thereafter.

5. The Claimant relies on two witness statements: one filed by Diamond herself as indicated in paragraph 2 above and the other by her sister LaTonya Munro on 15th January, 2019. The Defendants did not participate in the assessment and led no evidence.
6. In her witness statement, Diamond described the pain and suffering she endured at the time she was struck by the motor vehicle. It is her evidence that although she has made a good recovery, her leg still hurts when she runs and jumps. She relies on a follow up report from Dr. Byron Calliste dated 13th September, 2017 in which he states that there was slight tenderness on deep palpitation on exterior of right leg. A circumferential scar of leg was noted and physiotherapy is recommended.
7. In the Statement of Claim, the Claimant claims special damages in the sum of \$10,465.00, particularized as follows

Cost of medical report of Dr. Dragon	\$150.00
Clothing & toiletries for hospital	\$600.00
Taxi service to and from general hospital	\$165.00
Food items	\$2,000.00
Letter requesting medical report	\$250.00
Cost of mother's care	\$4,500.00
Legal fees to date	\$2,000.00
Medication	\$600.00
Doctor's visits	\$200.00
Total	<u>\$10,465.00</u>

8. In the witness statement of Latonya Munro, she outlined what she says were the actual expenses for Diamond following the accident

Nursing care by sister	\$500.00
Medical report	\$250.00
Loss of school clothes, shoes, bags, books, umbrella	\$1,000.00
Transportation to Hospital taxi and bus	\$1,000.00
Crutch	\$30.00
Food while in hospital	\$1,000.00
Medication	\$200.00
Lawyer's letter for medical reports	\$1,500.00
Legal fees	\$2,000.00
Doctors' visits	\$100.00
Clothing and other expenses	\$2,000.00
Money advanced	<u>\$6,000.00</u>
Total	<u>\$15,580.00</u>

Special Damages

9. Before the commencement of the assessment hearing, the Court had asked Counsel for the Claimant to produce receipts or any receipts in the possession of the Claimant to support the claim for special damages. Counsel indicated that the next friend and sister had not kept any receipts and he was only able to produce an illegible receipt as proof of

- purchase of a pair of shoes for Diamond. The Court could not discern the amount on the receipt and neither could Counsel.
10. Only two invoices were produced as any evidence of expenditure: one for \$500.00 for nursing care by the Sister and the other for \$6,000.00 from the Law Office of Francis Williams.
 11. In her witness statement, LaTonya Munro stated that she received an advance of \$6,000.00 from Counsel for the Claimant to assist with purchasing supplies for Diamond including school supplies and payment of school fees, uniforms, shoes and books. It is her evidence that their mother is disabled and bedridden.
 12. The Claimant pleaded \$4,500.00 for mother's care, but in the sister's witness statement claimed the sum of \$500.00 for care by the sister. I would allow this item of loss. There are no receipts for the payment of the medical reports, but the Court accepts that the Claimant would have been required to pay to obtain the medical reports from Dr. Dragon and Dr. Calliste. The amount of \$250.00 claimed is not excessive. In the case of **Jair Hosford (by his guardian and mother Leba Hosford) GDCHCV2008/0621**, a case out of Grenada, the cost of a medical report in that case was \$550.00.
 13. In the Statement of Claim, the cost of medication was stated as being \$600.00, but in the witness statement of LaTonya Munro a sum of \$200.00 is claimed. \$200.00 for Doctor's visit was also pleaded in the Statement of Claim and in the witness statement \$100.00 is claimed. The Medical Report of Dr. Dragon indicated that the Claimant was prescribed medication and Diamond visited and was examined by Dr. Calliste. I would allow the sums as claimed in the witness statement that is \$200.00 for the medical report and \$100.00 Doctor's visit notwithstanding the lack of proof by way of receipts. The Court would apply the principles laid down in **Greer v Alstons Engineering Sales & Services Ltd. (2003) 63 WIR 388**, the effect of which is a Claimant may be awarded a nominal sum for loss where the quantum cannot be strictly proven, but there is in fact evidence of a loss.
 14. Unfortunately the other line items, apart from not being supported by any receipts, no evidence was led to support the same. In respect of the monies advanced by Counsel, the court is not satisfied that the use to which Latonya Munro has said she put the monies can be linked directly to the accident. Indeed, the payment of school fees, school uniforms, shoes and books is a fact which existed before the accident and an obligation of Diamond's parents or guardians. There was no pleading nor any evidence led that Diamond was on her way to or from school and was wearing her school uniform at the time of the accident and no evidence led that in consequence of the accident, she has lost her uniform, book bag, shoes and umbrella. There is no evidence of how long the mother has been bedridden whether before or after the accident nor how the accident has affected her ability to provide these necessities of life for Diamond. In the circumstances, the court cannot allow the claim for \$6,000.00 being monies advanced. The other line items also differ in amount as pleaded in the statement of claim and as set out in the witness statement with nothing whether by way of neither evidence nor a receipt to support them. This is unfortunate.
 15. Counsel for the Claimant had urged on the Court, the principles laid down in **Grant v Motilal Moonan Ltd. and another (1988) WIR 372**, in which the Court of Appeal of Trinidad and Tobago held that notwithstanding the fact that the Appellant was unable to produce receipts for loss of the items claimed, the Appellant had prima facie established the cost of the articles claimed by her. The Court found that the Appellant had compiled

the list on the day after the accident, complete with a cost against each item and that the evidence given by the Appellant was unchallenged by the Respondent.

16. I do not accept that this case can assist the Claimant. In the first place, there is no prima facie evidence to support the items that were disallowed and the Court does not consider that the intention of the Court of Appeal in **Grant's Case** (supra), was to create a carte blanche rule that in every case where a party is unable to produce a receipt, the Court must accept a statement of the cost even when it is unchallenged.
17. The Court finds that the Claimant is entitled to Special Damages in the sum of \$1,050.00 as follows:

Nursing care by sister	\$500.00
Medical report	\$250.00
Medication	\$200.00
Doctors' visits	<u>\$100.00</u>
Total	<u>\$1,050.00</u>

General Damages

18. The Court is guided by the principles laid down in **Corneliac v St. Louis (1965) 7 WIR 491**, in assessing general damages. Wooding CJ, prescribed the following heads of damage:

Nature and extent of the injury sustained

19. These are outlined in the medical reports of Dr. Dragon and Dr. Calliste. The contents of Dr. Dragon's medical report were reproduced in paragraph 3 above. These injuries can be described as serious injuries as the report noted that there was an almost complete amputation through the right distal leg and the dorsalis pedis and tibialis posterior pulses were weak. I have no reason to doubt the report and there was no challenge to the same.
20. Diamond herself described her leg as being partially amputated in her witness statement.

Nature and extent of the resulting physical disability

21. The report of Dr. Calliste which is a final report dated 2 years after the accident, 13th September, 2017 stated that an examination of Diamond revealed a circumferential scar of her leg with slight tenderness on deep palpitation and residual soft tissue injury. He recommended physiotherapy.
22. There was no evidence whether Diamond underwent or is doing physiotherapy.

Pain and suffering and loss of amenities

23. Dr. Dragon's report clearly stated that Diamond was conscious, in his words "alert and well oriented". He also stated that her memory was grossly intact. In paragraph 3 of her witness statement, Diamond stated that she felt great pain after she was struck and while she was at the hospital, she observed that her right foot was "badly damaged". She further gave evidence that her foot still hurts when she runs and jumps. I believe her. The final report of Dr. Calliste also noted Diamond's complaint of feeling pain in the anterior aspect of her right leg. Diamond's sister LaTonya in her witness statement stated that she would take Diamond for a walk and Diamond would become scared when she heard the sound of an approaching vehicle. LaTonya also stated in paragraph 6 that she has noticed that Diamond has become very forgetful and it has affected her ability to hear at school. Unfortunately this is not supported by any medical evidence. However, I have no reason to

doubt that her education would have been affected by this traumatic accident, by reason of her being away from school for at least 17 days.

Future care

24. The medical reports suggest that Diamond has not made a complete recovery, but no claim has been laid for future care of Diamond, nor any medical evidence submitted as to say what that care would entail.

Courts findings and conclusions

25. I accept that Diamond has suffered severe personal injuries for which she must be compensated. For the reasons outlined above and the findings made, I award special damages in the sum of \$1,050.00.
26. In respect of general damages, I take guidance from the authorities out of Grenada and submitted by Counsel for the Claimant, which were very helpful. In the case of **Shatona Wayne (by her next friend Alicia Wayne) et al v Jefferson Antoine et al GDAHCV2004/0104**, Master Lanns gave an award of \$150,000.00 for pain and suffering and loss of amenities to a 6 year old girl who suffered injuries similar in nature to Diamond. I take notice of the fact that the Claimant in that case had several surgeries and a disability resulting in the shortening of one leg together with other complications.
27. In the case of **Fae-Ann James (by her mother and next friend Linda Welsh) v Randy Thomas GDACV2016/0186**, Master Dyer(Ag.), awarded a 7 year old girl the sum of \$45,000.00 for pain and suffering and loss of amenities. The Claimant in that case suffered a displaced fracture of left distal tibia and fibula, which were 100% healed.
28. In the case of **Jair Horsford (by his mother and guardian Leba Horsford) v Carrington Coppin GDAHCV2008/0621**, Master Lanns awarded a 14 year old boy with similar, but even more severe injuries, the sum of \$150,000.00 for pain and suffering and loss of amenities. The Claimant in that case suffered a fracture to the thigh bone as well as the tibia and fibula resulting in the shortening one leg, keloid scars on his forehead wrist, elbow and buttock as well as scars where surgery was performed. The Claimant also missed 2 terms of school and had to repeat a form.
29. Taking into account the injuries suffered by Diamond, her age and the pain and suffering endured by her together with the comparable cases and the findings made above, I award the sum of \$100,000.00 for pain and suffering and loss of amenities.

Interest

30. The Claimant claims interest on special and general damages, to which she is entitled pursuant to Section 27 of the West Indies Associates States Supreme Court (Grenada) Act, Cap. 336. I award interest on special damages at the rate of 3% per annum from the date of the accident to the date of this assessment. Interest is awarded on general damages at the rate of 6% per annum from the date of service of the claim to the date of judgment in default and thereafter interest at the statutory rate until payment.

Costs

31. There was no defence filed to the claim and this was an assessment after default judgment. The Claimant is therefore entitled to 60% of her costs pursuant to Part 65 of the Civil Procedure Rules 2000.

32. In summary, it is ordered that damages are assessed as follows:

- i. Special damages in the sum of \$1,050.00 with interest at the rate of 3% per annum from the date of the accident to the date of this assessment.
- ii. General damages in the sum of \$100,000.00 for pain and suffering and loss of amenities with interest at the rate of 6% per annum from the date of service of the claim to the date of to the date of judgment in default and thereafter interest at the statutory rate until payment.
- iii. Prescribed Costs



C. Debra Bumette
Master (Ag)

