

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NUMBER: SVGHCV2015/0136

BETWEEN

GEORGE REYNOLD SCOTLAND

CLAIMANT

AND

OSBOURNE HEWITT
DAVID SAMUEL

DEFENDANTS

BEFORE: MASTER ERMIN MOISE

APPEARANCES:

Mrs. Patricia Marks-Minors with Mr. Ronald Marks of Counsel for the claimant
Mr. Duane Daniel with Ms. Jenell Gibson of Counsel for the Defendant

2019: July 23
November 5

JUDGMENT

[1] **Moise, M.:** This is a claim for personal injury sustained by the claimant as a result of a motor vehicular accident which occurred on 5th November, 2013. On 19th January, 2019, judgment was entered in his favour with damages to be assessed. The assessment took place on 23rd July, 2019. I now come to determine the damages to which the claimant is entitled.

THE FACTS

[2] The claimant, who claims to be a mason by profession, was riding his motorcycle on 5th November, 2015 when the first defendant, who was the driver of motor vehicle registration number HK297, collided with him. As a result of this collision, the claimant was flung into the air and landed in a gutter which was nearby. He states that he was rendered unconscious as a result of the impact. He was taken to the Milton Cato Memorial Hospital and described as being disoriented upon arrival. Upon immediate examination he was observed to have a laceration to the right eyelid,

swelling of the right peri-orbital region and a laceration of the left parietal area. His left pupil was dilated and reacted sluggishly. The claimant's right leg was externally rotated.

- [3] In the medical report dated 21st May, 2014 it was noted that an x-ray was done which revealed that the claimant had a fractured skull, a fractured right femur and a questionable pelvic fracture. A CAT scan of the head revealed a basilar skull fracture and a left parietal epidural hematoma. He was admitted to the intensive care unit, intubated and given dexamethasone and other medication based on his neurological injury. The medical team discussed with the claimant's family, the possibility of engaging a neurosurgeon from abroad. They however declined this invitation.
- [4] The report indicates that the claimant's condition improved over time and he was extubated after several days on a ventilator. He was maintained on antibiotics, given nasogastric feedings and subsequently weaned from steroids. After a period of 8 days, the claimant was transferred to the regular floor. After a number of weeks he was taken into surgery in order to treat his fractured femur. He was managed under the orthopedic service and subsequently discharged. He spent a total of 43 days at the hospital.
- [5] The claimant presented a medical report from Dr. Charles Woods, dated 2nd December, 2014. Dr. Woods stated that he reviewed the claimant at his clinic on 2nd December, 2014 and observed that he had excellent range of motion of the injured hip and knee and is fully ambulant without assistance. He noted that there was some osteoarthritis of the knee which he opined was expected at the claimant's age and the associated trauma. He did however make a complete recovery from the injury to his right femur.
- [6] The claimant and members of his family however continued to complain of memory loss and incoherent speech. He was examined at the facilities of Integrated Medical Care on 27th December, 2017. By way of medical report dated 27th March, 2019, Dr. Masada James states that a CT scan was performed which revealed that the claimant suffered from Cerebral Cortical Atrophy, areas of Encephalomalacia, Acute Ischemic Stroke and Compensatory dilation of the left lateral ventricle. Based on the findings of the scan it was recommended that the claimant seek further neurological consultation.
- [7] The claimant was later examined by Dr. Peter Kowlessar, a general Neurologist. In his report dated

28th June, 2019 Dr. Kowlessar noted that the claimant suffered permanent brain damage. He came to this conclusion after examining the result of the various scans done prior to his examination of the claimant. He did however note that it was reasonable to assume that the claimant was not wearing a protective helmet at the time of the accident. Regarding Dr. James' statement that the claimant suffered from memory loss and incoherent speech, Dr. Kowlessar indicated that the extent of this was not identified. He was of the opinion that the claimant would likely experience some difficulty with emotional control, slow thought process, difficulty with thought and conversation initiation, medium and short term memory impairment, poor concentration, slow mobility and some visual sensory inattention. These he stated were likely to be permanent. He notes however that the extent of this loss of function is highly variable and cannot be determined by assessing the result of the CT scan alone. He recommended a structural test, which is not available in Saint Vincent and the Grenadines. Unfortunately, the court does not have the benefit of such a test.

[8] Dr. Kowlessar also states that despite his injuries, the claimant should be capable of attending to his personal hygiene and activities of daily living. He may require frequent encouragement, prompting and assistance with tasks. He is unlikely to engage in household chores without supervision and will require regular daily support with routine tasks. His attention span may be severely limited as well.

THE ASSESSMENT OF DAMAGES

[9] The claimant's injuries appear to me to be very serious and it is important to consider in detail the factors outlined in the case of ***Cornilliac v St. Louis***¹ in assessing the general damages for pain, suffering and loss of amenities to which he is entitled. I will examine each one in turn.

(i) The nature and extent of the injuries sustained

[10] The claimant's injuries are indeed serious. He suffered fractures to his skull and right leg. His injuries required an extended period of hospitalization, some of which was spent in the intensive care unit of the hospital. He had to undergo surgery to the right leg. The medical evidence also suggests neurological injuries as a result of the accident. He is said to have suffered from some

¹ (1965) 7 WIR 491

measure of brain damage, which will affect him for the rest of his life. I do note however, that the extent of this injury has not been fully determined as the medical evidence presented recommended further testing and medical examination. These were not done.

(ii) The nature and gravity of the resulting physical disability

- [11] According to the medical evidence presented, the injuries to the claimant's leg have healed completely, although there is now some osteoarthritis of the knee. That is expected for the claimant's age and the nature of the injury which he suffered. His main disability however is neurological. Whilst he will be able to attend to his personal hygiene and other daily functions, it is determined that he will need supervision in performing household chores and that his brain damage will affect his emotional control, thought process and memory. This would no doubt affect the claimant's socialization and his interaction with his family and friends. He states in his own witness statement that he cannot stand for long periods and experiences difficulties in walking. I bare these issues in mind in the decision I am called upon to make.

(iii) The pain and suffering endured

- [12] In his witness statement the claimant states that his injuries caused him "great pain". He had to undergo surgery and had impaired mobility upon being discharged from the hospital. He also had to undergo a period of physiotherapy. The loss of some of his neurological function has no doubt affected him in a significant way and will continue to so affect him for the rest of his life.

(iv) The loss of amenities

- [13] The claimant was 67 years old on the date of this incident. He states in his evidence that he was an active person then. He enjoyed playing dominoes with his friends as well as farming and gardening. Although his fractures have healed, he claims to be unable to bend and stand for long periods. He can no longer lift heavy objects. This has affected him in enjoying his social life and the past time activities he once engaged in. He continues to suffer with his memory and general orientation due to his neurological injuries.

(v) The impact the injuries had on the claimant's pecuniary prospects

[14] The claimant complains of his inability to work since the accident. Whilst the medical evidence does not directly address this issue, I note that he was determined to have a need for supervision in the performance of household chores. On balance I am satisfied that his injuries have affected his ability to work. He states that he was a Mason by profession and earned approximately \$200.00 per day. He also laid tiles from time to time as a means of supplementing his income. He was the main breadwinner of the family and his inability to work has placed a great strain on his wife and children. He states that it is highly unlikely that he will ever be fully employed again. However, as the defendants have rightly pointed out in their own submissions, the claimant has presented little evidence of his employment and the amount of money which he actually made. I will consider this issue in more detail later on in this judgment.

SPECIAL DAMAGES

[15] The claimant's motorcycle was damaged as a result of the accident. He claims that the pre-accident value was \$9,000.00. He attached an estimate from D&E Auto Services to substantiate this claim. The defendants have argued however that he has not provided evidence of the ownership of the motorcycle. In any event, according to the defendants, the estimate establishes a residual or scrap value of \$1,000.00 which ought to be taken into consideration. I agree with that submission and would award the sum of \$8,000.00 for the damage to the motorcycle, which I am satisfied belonged to the claimant. He also initially claimed the sum of \$1,550 for medical consultations. He has however provided an up dated invoice from the hospital showing his total expenses stand at \$2,675.00. He has provided receipts for these expenses and the defendants take no issue with them. I would therefore allow this claim.

LOSS OF EARNINGS

[16] Counsel for the claimant submits that the claimant ought to be compensated for the number of days which he has been unable to work since the accident. This he calculated to be 1943 at 1st March, 2019. As at the date of the writing of this judgment a total of 244 additional days would have elapsed. I do express some challenges with fully accepting counsel's submissions. The claimant did not provide evidence that he worked fulltime with any establishment. One can therefore readily assume that as a mason he works whenever he gets a job. He was already 67

years old at the date of the accident, which meant that he had passed the recognized age of retirement.

[17] Whilst the court accepts that he worked and took care of his family, the court must take into consideration that he may not have worked for every day of the year, as appears to have been claimed based on the calculations he has presented to the court. There may have been periods of unemployment. Where there is no direct evidence, as is the case in the present circumstances, the court will make a nominal award. Given that the accident took place in 2013, I will consider an annual award to address this issue. There are on average, 240 working days per year; giving due consideration to weekends and public holidays. Given the nature of the claimant's employment and the possibility that there may have been periods of inactivity I would average the number of workers days per year since the accident to be 200 days.

[18] I am also in agreement with the defendant where it is argued that the claimant has not provided sufficient evidence of the amount of money he was paid daily for his work. He does not even outline much evidence regarding his experience in the field and who he may or may not have worked for. \$200.00 a day appears to me to be somewhat excessive and without proof I would not grant such an award. The claimant in fact relies on the case of **Lawrence John v. Jason Minors et al**² where the claimant claimed \$100.00 per day for his services as a mason. In that case it appears that much more evidence was provided to the court to substantiate this claim. In any event I am of the view that the sum of \$100.00 per day is more likely in the region of what is paid for such services in Saint Vincent and the Grenadines. At that rate and an average working day of 240 days per day I would award the sum of \$24,000.00 per year for loss of earnings to the claimant. I would award him that annual income for the period since the accident for a total of \$144,000.00 for loss of earnings.

LOSS OF FUTURE EARNINGS

[19] Counsel for the claimant also argues that an award for loss of future earnings ought to be made. He recommends a multiplier of 8 years. I do not agree. The claimant was 67 years old at the time of this accident. A multiplier of 8 would be too high in the circumstances. I would use a multiplier of

²SVHHCV2012/0354

2 and award the sum of \$24,000.00 per year. I would therefore award the sum of \$48,000.00 in loss of future earnings.

GENERAL DAMAGED FOR PAIN, SUFFERING AND LOSS OF AMENITIES

- [20] Counsel for the claimant refers to the case of ***Lincoln Carty v. Lionel Patrick et al***³ where the claimant was awarded the sum of \$175,000.00 for pain, suffering and loss of amenities for a number of fractures to his body along with various lacerations and dislocations. He spent 32 days in the hospital and underwent a number of surgeries. The claimant in that case also suffered from traumatic stress disorder. I am of the view that the injuries in that case were more severe than what was suffered by the claimant in the present proceedings. This case was decided in June, 2009 and would amount to approximately \$209,450.00 in value as at December, 2018.
- [21] The claimant also refers the court to the case of ***Andy Bute v. Gary Defreitas***⁴ where the sum of \$75,000.00 was awarded for injuries to his hip and left leg after being struck while riding his motorcycle. This case was decided in 2012. The award would therefore have a current value of approximately \$84,095.00 as at December, 2018. Counsel therefore submits that an award of \$100,000.00 would be reasonable in the circumstances.
- [22] The defendants argue on the other hand that the cases of ***Johnson v. Williams et al***⁵ and ***Fancy Rotary Corporation v. Henderson***⁶ are of some assistance to the court. In ***Johnson v. Williams*** the claimant was 60 years old when he was knocked down by the defendant. The defendant in fact drove his vehicle over the claimant's hip and abdomen. His injuries were such that he required hospitalization or a period of 49 days. He suffered from injuries to his lower back and pelvic area, painful bruising to his forearm, knees and leg. These injuries appear to have been persistent and he suffered constant pain while using a stick to walk. There was also increased frequency in urinating. He was awarded \$30,000.00 for pain, suffering and loss of amenities in December, 2007. This would have a current value of approximately \$37,121.00 as at December, 2018.
- [23] In ***Fancy Rotary Corporation v. Henderson*** the claimant was awarded the sum of \$50,000.00

³SKBHCV1998/0054

⁴SVGHCV2010/0303

⁵SVHCAP2003/0043

⁶SVHHCV2003/0033

after suffering a concussion, lacerations to the neck, elbow and forearm. There was a fracture to the acetabulum and a dislocated right hip. There was external rotation and shortening of the right leg. This award would however have a current value of approximately \$63,600.00 as at December, 2018. Based on these authorities, the defendant submits that an award of \$30,000.00 to \$50,000.00 would be reasonable.

[24] I do not agree with the range of damages proposed by the defendants. Whilst I accept that there was no conclusive prognosis on the claimant's neurological condition, the evidence is sufficient to conclude that the accident has caused some measure of brain damage, sufficient to entitle him to compensation beyond what has been submitted by the defendants. In addition to his leg injury, which required surgery, he sustained a fracture to his skull and his neurological functions have been affected as a result. That is a serious issue. I refer to the case of **Rogers V Dore**⁷ where in 1999 the claimant was awarded the sum of \$30,000.00 in damages for pure neurological injuries. There was no other evidence of pain and suffering. Her injuries were no doubt more serious than the claimant in the present case as there was a diagnosis of post-concussion syndrome and underlying depression and amnesia. There was evidence of this injury hampering her interaction with her family. However, in my view this case indicates that merely for the neurological injuries the claimant is entitled to some significant compensation. The award in **Rogers v. Dore** would attract a current market value of approximately \$46,000.00 as at December, 2018. Even reducing the award to cater for the difference in severity would suggest to me that the claimant is entitled to more than what is recommended by the defendants.

[25] Taking all of these into account, I would award the claimant the sum of \$100,000.00 in damages for the pain, suffering and loss of amenities he endured for the totality of his injuries. This is what he has requested and I am of the view that it is reasonable.

FUTURE MEDICAL CARE

[26] In his submissions, counsel for the claimant seeks an award of a "suitable sum" for future medical care. However, to my mind, the evidence is grossly insufficient to enable the court to address its mind to this issue. It is noted that Dr. Kowlesser recommended a certain test in order to properly

⁷SKBHCV1999/0012

address his mind to the extent of the claimant's injuries. The nature and expense of this test is not available in evidence. Perhaps even evidence as to the likelihood that this test or further care will result in an improvement or management of the claimant's injuries would have assisted. I would decline to make such an award on the basis of the evidence presented to me.

NURSING CARE

[27] The claimant, in written submissions states that the sum of \$5,000.00 ought to be awarded for nursing care. Like counsel for the defendant has submitted, I too am unable to ascertain a basis for this sum to be awarded. In the case of ***Cleos Billiny v. Kevon Jesse-Don Anderson et al***⁸ Master Pearletta Lanns stated that ***"[i]t is the law that if a wife or mother or other member of the family undertakes to provide nursing care, an allowance will be made for the fair value of the services rendered because they are services madenecessary by the injury, although the Claimant has made no agreement to pay for them."*** Mr. Billiny was awarded damages for nursing care in the sum of \$500.00EC per month. I accept that the claimant would have needed some assistance in the immediate aftermath of his injury; especially upon his return from the hospital. However, the evidence is unclear as to precisely what this period of recovery ought to be. I would therefore award the sum of \$500.00 per month for a period of 3 months making a total of \$1,500.00 in damages for nursing care services.

[28] In the circumstances I would award the claimant the following in damages:

- (a) \$10,675.00EC as special damages for medical expenses and the loss of the claimant's motor cycle;
- (b) \$144,000.00 as damages for loss of earnings
- (c) Nursing care in the sum of \$1,500.00
- (d) Interest on special damages at a rate of 3% per annum from the date of the accident until paid in full;
- (e) General damages for pain, suffering and loss of amenities in the sum of \$100,000.00EC.
- (f) Interest on general damages at a rate of 6% per annum from the date of judgment;

⁸ SVGHCV2013/0096

- (g) Loss of Future Earnings in the sum of \$48,000.00EC with no interest;
- (h) Prescribed costs is awarded in favour of the claimant in the sum of \$39,167.50.

**Ermin Moise
Master**

By the Court

Registrar