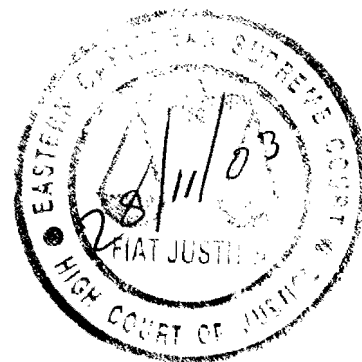


IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES



NO: 25/1998

BETWEEN:

ARTHUR EDWARDS

CLAIMANT

V

ENROY HAYNES
GEORGE HAYNES

DEFENDANTS

Appearances :

Mr. S.E. Commissiong for the Claimant.

Mr. R. Burch-Smith for Defendant

28th November 2003

RULING

- [1] On the 9th May 1996 Mr. Arthur Edwards was struck by a motor vehicle as he walked along the Fenton Mountain Road. He suffered severe injuries. After trial Mitchell J. on 24th January 2000 gave judgment for the Claimant for damages to be assessed and costs. This is the assessment.
- [2] The first Medical Report of Dr. Cecil Cyrus dated 28th May 1996 catalogues the injuries which were then visible. These were
1. A 4cm vertical laceration to the right eyebrow and forehead which had been sutured
 2. A 1.5cm laceration of his right cheek which had been sutured
 3. A 1.5 cm laceration of the right upper lip
 4. A small depression over the supra orbital region
 5. Swelling of the right eyebrow, right cheek and both lips due to blood clot

[3] Before the accident Mr. Edwards suffered from some neurological deficit. He spoke with a slur but was able to walk unassisted. He viewed television programs and could discuss them intelligently. He fed himself and would shop for himself at the grocery. He enjoyed swimming and was sexually active.

[4] After the accident Dr. Cyrus found his neurological condition to be:

- 1 He was conscious and obeyed commands but did not speak
2. His pupils were equal. small and reacted to light.
3. He was in a state of hyperkinesia. His four limbs, especially his arms were in constant ceaseless motion, crossing over one another. He was trying to get out of bed and had to be restrained. Valium was administered but this did not help.
4. There was loss of power in the left arm.
5. He was incontinent of urine.
6. He was unable to feed himself and had to be fed by intravenous fluids for several days.
- 7 x-rays revealed no bony injury.

[5] Dr. Cyrus concluded that Mr. Edwards had sustained damage to the brain as a result of the injury. He had lost consciousness after the accident. The former neurological condition was now much worsened so that at the time of the report – some 3 weeks after the accident – Mr. Edwards was still in a semi vegetative state and still did not talk.

[6] Mr. Edwards died on 26th December 2000. During the remainder of his life after the accident Mr. Edwards' loss of amenities was total. He could no longer take care of himself. He could not attend to his personal hygiene or dress himself. He could no longer drive

[7] At the hearing of the assessment for damages the defendants did not wish to cross-examine any of the deponents who had sworn affidavits in support of the Claimant's position.

[8] Despite having had their Doctor examine Mr Edwards before his death the defendants did not file any Affidavit evidence. The only evidence for consideration came from the Claimant.

[9] The Claimant is entitled to be compensated for the pain suffering and loss of amenities occasioned by the accident. He is entitled to recover as special damages all expenses incurred as a result of the defendant's negligence. In this case no question of loss of earnings arises as Mr Edwards was not employed at the time of the accident. His pre-existing neurological condition, which the Doctors have been unable to explain, meant that he was unlikely to have worked again. No claim for compensation is made in this regard.

SPECIAL DAMAGES:

[10] The cost of the medical care of Mr. Edwards was not challenged by the defendant by way of any affidavit. Dr. Cyrus was not cross-examined. His bills amount to \$49,965.00. For nursing care the Claimant is entitled to recover the amount claimed \$11,920.00. I am not satisfied that the Claimant should recover the sum of \$41,400 claimed for domestic assistance. It is clear that even before the accident Mr. Edwards required and had domestic assistance. I do not allow this amount.

[11] The Claimant also seeks to recover a sum of \$38,432 for medicines and special foods required by Mr. Edwards up to his death. I am not persuaded that this claim has been sufficiently particularised and proved. I do not allow this amount.

[12] The total award for special damages then as I find it is \$61,885.00

GENERAL DAMAGES:

[13] As noted earlier Mr. Edwards suffered injury to his brain. The result was a total loss of amenities for the rest of his life. He was 47 at the time of the accident and despite his neurological condition, appeared to have enjoyed a pain free existence which permitted him to enjoy much of everyday life. I award \$100,000.00 for loss of amenities and pain and suffering.

COSTS:

[14] I award the Claimant costs on a prescribed costs basis. The value of this claim as I have said is \$161,885.00 costs are awarded to the Claimant in the amount of \$33,200.00


Brian S. Cottle
MASTER