

EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: SLUHCV2018/0018

Between

Paul Joseph

Claimant

AND

1. Shandell Pamela Hubbard
2. Baron Foods Limited

Defendants

Appearances: Mrs. Maureen John–Xavier of counsel for the claimant
Mr. Duane Jn. Baptiste of counsel for the defendants

2019: January 15th

Ruling

1. ACTIE M: On 16th January 2016, the claimant sustained injuries when a motor vehicle driven by the **first defendant and owned by the second defendant collided with the claimant's vehicle**. The claimant filed a claim with a statement of claim against the defendants and obtained judgment in default of defence with damages to be assessed. The matter now comes on for the assessment of damages.

Special Damages

2. The defendants conceded special damages as pleaded and proved comprising of the following:

- | | |
|------------------------------------|-------------|
| 1. St Jude's Hospital bills | \$3,049.75 |
| 2. St Jude hospital unpaid bills | \$34,268.44 |
| 3. Ambulance service | \$1,050.00 |

| | |
|--------------------------------------|-------------|
| 4. Medical Imaging Diagnostic Clinic | \$1,680.00 |
| 5. Miscellaneous | \$1,681.75 |
| 6. Physiotherapy Sessions | \$13,780.00 |
| 7. Legal letters and service | \$300.00 |
| 8. Medical Report | \$1,000.00 |
| 9. Traffic accident Report | \$200.00 |
| 10. Loss of Use | \$7,000.00 |
| 11. Garage Accident Report | \$250.00 |
| 12. Future medical care | \$390.00 |
| Total Agreed Special Damages | \$64,649.94 |

- The defendants dispute special damages for loss of income in the sum of \$72,000.00 and Domestic Care in the sum of \$9,825. 00.

Loss of income

- The claimant's claim avers that he earned \$4000.00 a month as a heavy duty operator and claims loss of income in the sum of \$48,000.00 for a year's earnings approximately. The claimant presented tax deduction statements from the Government of St Lucia for the period of 2010-2016. For the period of 2014 and 2015, the statement reflects annual gross earnings of \$12,000.00 and \$3000.00 respectively. The claimant also presented a letter dated 7th March 2016 from Owen B. Sadoo, Managing Director, Sadoo Engineering Services Ltd., indicating that the claimant offered backhoe and trucking services to the company from 2015 where he earned \$150 and \$125 per hour respectively. The statement did not provide further details such as total wages paid to the claimant or number of hours worked over any given period.
- The claimant also avers that he was the owner of a canteen and suffered loss of income of \$2,000 monthly and claims the sum of \$24,000.00 for the year. The claimant presented a savings activities statement of his bank account with deposits, wire transfers and withdrawals. The claimant did not provide evidence to clarify the log activities in the bank statement.
- It is not enough for a claimant to say that he sustained loss. A party claiming damages must prove

his case, and to justify an award of these damages he must satisfy the court both as to the fact of damage and its amount.¹

7. The Privy Council in Greer V. Alstons Engineering Sales and Services Ltd² **states that** “Where a claimant has pleaded the amounts claimed as special damages, but does not provide tangible evidence to prove the amount, it is always open to the court to give consideration to an award of nominal damages since the problem is one of proof but not the absence of loss.
8. I accept that the claimant was totally incapacitated for four (4) months and would have obviously lost income as a heavy-duty operator. However, there is insufficient evidence before the court to buttress the income generated from the canteen or the loss suffered as heavy duty operator as a result of his incapacity. In the circumstances, I will award a nominal sum of \$10,000.00 under this head.

Domestic Assistance

9. The claimant claims the sum of \$9,825 under this head. It is the evidence that the claimant was incapacitated for four months and required assistance to perform basic chores. The claimant claims for further domestic assistance for an additional five months post the four months stated in the medical report. In the absence of evidence to substantiate the additional five months claimed, I will allow an award for four months at \$50.00 a day making a sum total of \$6,050.00 for domestic assistance.

General Damages

10. The principles for compensation for general damages are well known and set out by Wooding C J in the landmark decision of Cornilliac v St Louis³ namely: (1) the nature and extent of injuries suffered; (2) the nature and gravity of the resulting physical disability; (3) pain and suffering endured; (4) loss of Amenities; **(5) extent to which the claimant’s pecuniary prospects have been affected.**

¹ British Transport Commission v Gourley [1956] AC 185

² [2003] UKPC 46 (19 June 2003).

³ Cornilliac v St Louis (1965) 7 WIR 491.

11. The claimant was 51 years at the time of the accident and 54 at the time of the assessment of damages. He was initially treated at the emergency room and then admitted to the surgical ward at the St Jude Hospital. The medical reports of Dr Dagbu, Consultant Orthopedic Surgeon, diagnosed the claimant with a displaced unstable pelvic fracture and blunt trauma to the bladder. The claimant was managed surgically with a closed reduction and external fixation of the pelvis. He then had an open reduction and internal fixation of his pelvic fracture with plate and screws. He was discharged after 10 days with follow-up care in the orthopedic out-patient's clinic and the urologist. He was re-admitted on the 16th February 2016 and discharged on the 22nd February 2016 for a bladder infection. According to the medical report dated 9th October 2018, the claimant is stable and had healed reasonably well but continues to have pain when he stands for prolonged periods, walks long distances or lifts up heavy items. It is anticipated that the claimant would most likely have pain off and on for the rest of his life. He was diagnosed as having 15% whole person impairment from the complex pelvic fractures with residual symptoms.
12. Dr. Braithwaite, Consultant Urologist, in a medical report dated November 12, 2018, diagnosed the claimant with erectile dysfunction and low urinary tract symptoms due to bladder outlet obstruction secondary to benign prostate hyperplasia. However, Dr. Braithwaite could not conclusively determine if either of the new issues was related to the motor vehicle accident.

Analysis

13. The assessment of damages is not a precise calculation as the aim is to provide reasonable compensation for the pain and suffering and loss of amenities. The court must strive for consistency by using comparative cases tailored to the specific facts of the individual case. Lord Hope of Craighead in *Wells v Wells*⁴ states:

“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**”.

14. The claimant claims for general damages the sum of \$150,000.00 and relies predominantly on the authority in *Orlando Edwin v Orin Sherwin Choyee et al*⁵. The claimant, 33 years old at the

⁴ [1998] 3 All ER 481

⁵ SLUHCV2017/0165 delivered on April 24,2018

time of the accident suffered an **“open book” fracture of the pelvis with a** widening of the symphysis pubis; bladder injury; multiple soft tissue injury to the back and lower limbs. The claimant was transferred to the Tapion Hospital where he waited for three (3) days in pain before undergoing surgery. The claimant’s injuries were managed surgically with open reduction; internal fixation of the symphysis with plates and screws and the bladder was repaired. Upon being discharged, he was unable to bear any weight due to the pain in his back and legs. He remained in bed and in pain for one month. He remained off work for approximately four (4) months and continued to suffer pain in the lower back, groin and pubic area, left hip and knee. The injuries impacted his sexual activities.

15. The defendants are of the view that Orlando Edwin’s injuries were more severe and suggest an award in the sum of \$85,000.00.
16. The court, in an assessment of damages, must have regard inter-alia to the age of the claimant, occupation, severity of the injury, extent **of treatment required, effect on the claimant’s work and the impact on the claimant’s lifestyle**. The court must not just determine liability but also all questions of causation. In the case at bar the court must consider, in particular whether the erectile dysfunction could be attributed to the accident. The evidence before the court does not conclusively confirm that the dysfunction was as a result of the accident.
17. I have considered the injuries suffered, which although bearing some similarity to the Orlando **Edwin’s** case, were less severe. I also take into consideration the age of the claimant, 51, when compared to that of the claimant in the Orlando Edwin’s case, who was 33 at the time of the accident. I am of the view that a sum of \$100,000.00 comprising \$80,000.00 for pain and suffering and \$20,000.00 for loss of amenity is reasonable in the circumstances.
18. In summary, it is ordered that the defendants shall pay the claimant the following awards:

1. Special damages

- i. As agreed - \$64,649.94
- ii. Loss of income - \$10,000.00
- iii. Domestic assistance - \$6,050.00

Total Special damages in the sum of \$80,699.94 is awarded with interest at the rate of 3% from the date of the accident to the date of filing the claim and at the rate of 6% from the date of filing until payment in full.

2. General damages for pain and suffering and loss of amenities in the sum of \$100,000.00 with \$80,000.00 for pain and suffering and \$20,000.00 for loss of amenities, with interest at the rate of 6% from the date of judgment until payment in full.
3. Prescribed Costs on the global sum pursuant to CPR 65.5

AGNES ACTIE

MASTER, HIGH COURT

BY THE COURT

REGISTRAR