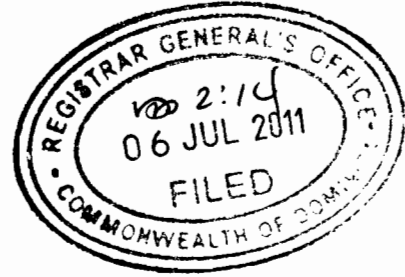


IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
DOMHCV2009/0296
[CIVIL]



BETWEEN:

MARTHA LEBLANC

Claimant

and

AUGUSTUS THOMAS

Defendants

JOHN LEBLANC

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Singoalla Blomqvist Williams for Claimant
Mr. Stephen Isidore for Defendants

[2011: January 11th, 17th 24th, 31st]

[2011: July 6th]

JUDGMENT

[1] **COTTLE J:** when this matter came up for trial the defendant accepted liability and the ancillary claim was withdrawn as was a counterclaim to that ancillary claim. The only extant issue was the assessment of the damages due to the claimant. The claimant sustained injuries in a motor vehicle accident.

- [2] The vehicle driven by the defendant collided with the rear of the vehicle in which the claimant was a passenger. The claimant sought to recover special damages of \$7,477.01, loss of income from 29th June 2009 and continuing, general damages for pain and suffering and loss of amenities.

Special Damages

- [3] Special damages are capable of substantially exact calculation. They must be specifically pleaded, particularized and proven in order to be recoverable. Loss of earnings to the date of the trial falls under this head. Here although the claimant has asked for "loss of earnings from 29th June 2009 and continuing" the claimant has failed to say in the pleadings how much was being claimed
- [4] The necessity to fully plead and particularize special damages such as loss of income has been emphasized repeatedly in these courts (see for example Ann Robertson v A.G GDAHCV2009/0338 applying Ilkew v Samuels [1963] 1 WLR 991 and Augustin Duncan v Commissioner of Police SLUHCV2002/0052). The failure to properly plead and particularize this item means that the claimant can recover nothing for lost wages to trial as special damages. The sum of \$7,477.01 has been pleaded and particularized. To recover the claimant must prove it.
- [5] At the hearing for the assessment of damages it emerged that some of the items claimed as expenses having been incurred by the claimant, had not in fact been expenses paid by the claimant. The claimant withdrew the claim for a helper in the sum of \$350.00 as well as \$800.00 and \$400.00 said to have been for night care and day care on 30th June 2009. Only three trips to Roseau and back to Portsmouth to visit the physiotherapist were demonstrated. The claimant thus limited the claim for special damages under this head to \$54 rather than the \$234 initially sought.
- [6] The claimant also submitted invoices showing certain payments for airfare to Antigua and taxi fares which were shown not to relate to this claim. From the evidence as a whole I accept that the claimant has shown special damages in the sum of \$3,997.01. It should be noted that a sum of \$1,500.00 paid to the Princess Margaret Hospital was apparently done by the claimant's insurers. I have disallowed this sum as it does not represent an expense incurred by the claimant.

Loss of earning capacity

- [7] The claimant says that because of her injury her capacity to earn has been diminished. At the hearing of the evidence on the assessment of damages it

emerged that the claimant had been able to return to her job after the accident. She was dismissed afterwards. It is unclear that her dismissal was related to injuries she sustained in the accident. Thereupon the claimant went into business on her own account. The claimant has not been able to show that she is unable to earn as much from her own business as from her former employment. Any diminution of her actual earnings might have been because of external economic circumstances and not any lessening of the claimant's ability to earn. I can make no award to the claimant under this head.

Pain, Suffering and loss of amenities

[8] The principles governing awards for pain suffering and loss of amenities were laid down in Cornilliac v St. Louis 7 WIR 491. I will examine the relevant factors in turn.

The nature and extent of the injuries sustained

[9] The claimant, aged 41 at the time, suffered a traumatic disc prolapsed of the c5- c6 cervical vertebrae. Surgery may be required to correct this. There was also a partial tear of the spinal muscle. The claimant says that she experiences neck pain. Dr. De Armas in his report says that this pain will persist. The doctor is unsure whether surgery will alleviate this pain. The court received some indication of the level of pain from the medical treatment. The claimant was prescribed mild painkillers for one week. The only disability the claimant has suffered is a loss of mobility in flexing her neck. No special loss of amenities was pleaded but in her evidence the claimant says that her ability to have sex has been affected. No medical evidence to support this was led.

Future medical expenses

[10] Dr. De Armas testified that the claimant may require surgery in the future. He said that conservative management and analgesics had benefitted the claimant. When re examined the doctor said that the surgery could improve her neurological deficit by fusing the vertebrae. With no movement there would be no pain. The likelihood of this future surgery was not quantified.

Award

[11] Counsel for the parties submitted a number of regional authorities for the guidance of the court. The claimant cited Gemma Clarke v Robert Nicholson 2009 from the Commonwealth of Dominica. Master Lanns awarded \$120,000.00 for pain and


suffering to a claimant who suffered a fracture of the right tibia which left her with a lifelong limp. She was unable to flex her ankle and toes. Her knee required repeated replacement of the knee joint twice per year. She had to undergo 34 surgical procedures. Her injury is clearly far more severe than that of the present claimant.

[12] Counsel for the defendant cited Celia Hatchette v First Caribbean International Bank BVIHCV2006/0227. That claimant suffered a strain of her cervical spine muscle and lumbar muscle. There was un-displaced fracture of the lumbar vertebrae. The award for general damages was \$20,000.00. Also cited was David Saunders v Grace Rhymmer claim 2001/0041 from St. Kitts. The award was \$14,000.00 for general damages. That claimant suffered residual whiplash injury to the neck and back.

[13] After considering the authorities the award to the claimant is as follows:

Special Damages	\$3,997.01
General Damages	-
Pain, Suffering & Loss of amenities	\$16,000.00
Future medical care	\$10,000.00
Total	\$29,997.01

Cost: the claimant is awarded prescribed costs in the sum of \$9,000.00. Interest is awarded at the rate of 5% from judgment until payment.


Justice Brian Cottle
High Court Judge

