

EASTERN CARIBBEAN SUPREME COURT  
SAINT VINCENT AND THE GRENADINES



IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2012/0138

BETWEEN:

- [1] SHUNETTE THOMPSON
- [2] RONISHA FOYLE by mother and next friend  
SHUNETTE THOMPSON
- [3] LATICIA FOYLE by her mother and next friend  
SHUNETTE THOMPSON

Claimants

and

- [1] OWEN JONES
- [2] DESMOND LEWIS

Defendants

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Ms. Patricia Marks for the claimants  
Ms. Mandella Campbell for the first defendant

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2014: June 4;  
August 5.

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**JUDGMENT**

- [1] **ACTIE, M. [AG.]**: Before the court is an application for assessment of damages.

**Background**

- [2] The claimants sustained injuries on 13<sup>th</sup> September 2010, when a motor vehicle owned by the first defendant and driven by the second defendant struck the claimants whilst they were walking along the Chauncey main road.

- [3] By order dated 8<sup>th</sup> August 2012, the claimants obtained judgment in default of defence for special damages in the sum of \$13,112.10 with general damages to be assessed. The claim was discontinued against the second defendant.

### **General Damages**

- [4] The general damages to be awarded to the claimants are to be assessed on the basis of the principles set out by Wooding CJ in the seminal case of **Cornilliac v St Louis**<sup>1</sup>.

### **The nature and extent of the injuries**

- [5] The nature of the claimants injuries are outlined in several medical reports and in witness statements.

#### **(a) Shunette Thompson**

The first claimant was 29 years old and 5 months pregnant at the time of the accident. She was transported to the Milton Cato Hospital and admitted to the ICU department. The medical report of Dr. Peter Kabala dated 26<sup>th</sup> October 2010 summarises the injuries as follows:

- 6 cm deep laceration to frontal region
- Clots in vaginal vault
- Abrasions/small laceration noted on both knees

The claimant underwent surgery for wound exploration and delivered a still birth. She was transferred to the female surgical ward where she complained of headaches and pains all over her body especially her hips. She travelled to Grenada for a CT scan where a fracture of the left orbit was noted. The claimant was discharged on 29<sup>th</sup> October 2012, 9 days after the accident.

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<sup>1</sup> Cornilliac v St Louis (1965) 7 WIR 491

**(b) Ronisha Foyle**

The second claimant 4 years old at the time of the accident was admitted to the children's ward and was discharged on 21<sup>st</sup> September 2010. The medical report of Dr. Tyasha Plummer dated 4<sup>th</sup> October 2010 diagnosed her injuries as follows:

- Mild closed head injury
- Right lung contusion
- Blunt abdominal trauma with renal injury
- Bilateral proximal humeral fractures
- A scalp laceration.

**(c) Latesia Foyle**

The third claimant 2 years old at the time of the accident suffered multiple superficial bruises to the face and head. The medical report of Dr. Tyasha Plummer dated 4<sup>th</sup> October 2010 diagnosed her injuries as follows:

- Severe head injury
- Bilateral lung contusions
- Blunt abdominal trauma with splenic, likely hepatic and pancreatic injury and renal injury.

The third claimant remained unconscious until 20<sup>th</sup> September 2012. She had weakness on her left side and her lower limb. The claimant was sent to Grenada on 22<sup>nd</sup> September 2012 for a CT Scan. She showed improvement on her return but residual left side paresis was noted.

**The nature and gravity of the resulting disability**

- [6] (a) **Shunette Thompson** - The claimant in her witness statement states that she continues to suffer pain and stiffness of the neck and her left knee. The claimant also continues to experience pain about her body on a daily basis. The claimant submits that she gets tired easily and has difficulty standing for long periods as her legs become swollen. She also complained of pain in the cervical area. On initial evaluation she was ambulatory with her neck tilted towards the right. She needed one minimum assist for her daily activity and manages her mobility with difficulty.

(b) **Ronisha Foyle** - the medical report states that the second claimant injuries are much improved but she has been left with scars about her body. She has a large raised or keiloid scar on her leg. There is also a scar along the left side of her face from her scalp to her eyebrow. The claimant continues to complain of headaches and pain in her arms which were both broken in the accident.

(c) **Latesia Foyle** – the medical evidence states that the claimant was found to have weakness, increased tone and full passive range of motion of the left upper and lower extremities. Her ability to reach for and grasp objects with her left extremity was poor. She dragged the left lower extremities and was only able to walk with support from her parents. The physiotherapy report in June 2011 indicated an improvement of reach and grasp of the left upper extremity. She no longer needed the support to walk but still drags the left lower limb with persisting weakness in her left hand. She has difficulty walking and running and constantly falls. The evidence reveals that the claimant has numerous raised keloids scars about her body including her leg and shoulder. She also has difficulty speaking and is now unable to pronounce some words which she could have done prior to the accident.

**Award of general damages for Pain and Suffering and Loss of Amenities**

[7] The first, second and third claimants seek awards of the sums of \$80,000.00, \$50,000.00 and \$70,000.00 respectively for pain and suffering and loss of amenities. In support, the claimants rely on the authorities of **Rashid Piggot v Galeforce Windows & Doors Inc<sup>2</sup>** and **Mercedes Delplesche v Samuel Emmanuel De Roche<sup>3</sup>**.

[8] In **Rashid Piggot**, the claimant 42 years old was struck on his head by a 20 foot metal reinforcement steel frame when he was assigned to assist with the off-loading of materials from a container. The claimant was knocked temporarily unconscious and taken to hospital for treatment. The claimant claimed to have

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<sup>2</sup> ANUHCV2004/0069 delivered on 11<sup>th</sup> January 2007.

<sup>3</sup> SVGHCV2012/0041 delivered 19<sup>th</sup> April 2013.

continued suffering excruciating and constant pain in his head, chest and shoulder and was advised that he would have to live on pain killers for the rest of his life. He also had to reduce to less demanding type of employment as a result of his injuries. The court awarded the sum of \$50,000.00 for pain and suffering and loss of amenities.

[9] In **Mercedes Delplesche v Samuel Emmanuel De Roche** the claimant, 54 years of age was standing on the side walk where she was struck by a motor vehicle. The claimant was admitted at the Milton Cato Hospital and discharged 4 days later and continued physiotherapy sessions. The claimant suffered (a) trauma to head and left knee (b) abrasions to face (c) laceration to forehead, nose and lower lip and (d) Bleeding from nostril. The claimant continued to suffer from severe pains in her lower back, head and knee and had difficulty walking. The court awarded the sum of \$65,000.00 as general damages for pain and suffering and loss of amenities.

[10] The defendant submits that the first claimant's injuries are comparable to those of the claimant in the **Mercedes Delplesche's case** and suggests an award of \$70,000.00 taking into account the grief suffered in relation to the loss of her unborn child. The defendant further submits that an award in the sums of \$30,000 and \$40,000.00 are reasonable sums to be awarded to the second and third claimants respectively for pain and suffering and loss of amenities. The defendant in support cited the following cases:

- (1) **Danny Bramble v William Danny and Key Properties Limited**<sup>4</sup>
- (2) **Nigel Mason v Maundays Bay Management Ltd (trading as Cap Juluca Hotel)**<sup>5</sup>
- (3) **Leantha Pacquette Lewis v Irvin Durand** <sup>6</sup>

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<sup>4</sup> ANUHCV199.0160 delivered on 15<sup>th</sup> January 2004.

<sup>5</sup> AXAHCV2006/0090 delivered on 23<sup>rd</sup> June 2009.

<sup>6</sup> DOMHCV 2011/0341 delivered on 30<sup>th</sup> April 2013.

- [11] In making the award for general damages I am reminded by the principles enunciated by Lord Hope of Craighead in the House of Lords case of **Wells v Wells**<sup>3</sup> where he said:

"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 best estimate of the plaintiff's general damages."

**The first claimant - Shaunette Thompson**

- [12] The first claimant endured the loss of her unborn child and also suffered head, neck, back, knee and other injuries. She was rendered unconscious on impact of the accident and when recovered was in pain and became upset on hearing of the injuries of her children and loss of her unborn child. The first claimant states that she was a normal healthy woman prior to the accident. Presently she is self-conscious of her appearance due to her scars and the tilting of her head. The first claimant alleges to be experiencing weakness in her legs and has difficulty standing for long periods. She has difficulty carrying out her usual everyday activities and relies heavily on her common law husband for help personally and with her children.
- [13] The first claimant seeks the sum of \$50,000.00 for the trauma and stress suffered as result of loss of her unborn child along with an award of at least \$80,000.00 for pain and suffering and loss of amenities. The first claimant cites the authority of **Jacqueline Pena et al v British Islands Health Services Authority**<sup>7</sup> in support of claim for trauma and stress for the loss of her unborn child. In that case, the claimants claimed damages against the defendant for the wrongful disposal of their baby's body. The claimants had consented to a post mortem examination to determine the cause of death of their baby who died soon after delivery. The baby's body was disposed by cremation in error at the end of the post mortem without the consent of the claimants. The claimants were awarded damages for the psychiatric injuries suffered as a result of the wrongful burial of their baby.

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<sup>7</sup> BVIHCV2012/0101 Delivered on May 22, 2013

[14] The defendant in the case at bar opposes the claim for psychiatric injury and submits that the first claimant has not provided any medical diagnosis or psychiatric evaluation in support of the claim for damages for the alleged stress and trauma suffered as a result of the loss of the baby. The defendant cites the text, **Personal Injury Law Liability Compensation and Procedure**<sup>a</sup> where the author Peter Barrie states:

"The normal human emotions of grief, distress, anger and unhappiness lie outside the scope of common law compensation. It is true that an award of damages for pain and suffering and loss of amenity will include an element for the unhappiness of undergoing the consequences of an injury... But in a claim for psychiatric injury the claimant must prove the presence of a recognised psychiatric illness in order to be entitled to compensation. The distinction is generally made by assessing whether the claimant has a diagnosis of psychiatric illness according to one of the diagnostic manuals.."

The text citing the case of **Mcloughlin v O'Brien** where Lord Bridge said:

"the common law gives no damages for emotional distress which any normal person experiences when someone he loves is killed or injured, anxiety and depressions are normal human emotions. Yet an anxiety neurosis or a reactive depression may be recognisable psychiatric illness, with or without psychosomatic symptoms. So the first hurdle which the claimant claiming damages of this kind in question must surmount is to establish that he is suffering not merely grief, distress or any other normal emotion, but a positive psychiatric illness."

[15] I accept the defendant's submission that the claimant has not provided a scintilla of medical evidence on which basis to make a separate award for stress and trauma suffered for the loss of her unborn child. However there is absolutely no doubt in my mind that the first claimant suffered emotional stress and pain occasioned on the loss of her unborn child. I have reviewed the evidence and authorities cited by the parties and I am inclined to rely on the authority of **Mercedes Delplesche v Samuel Emmanuel De Roche** emanating from this jurisdiction in which the circumstances are somewhat similar to the facts and injuries suffered by the first claimant. In determining an appropriate award I take into consideration that the claimant is younger than the claimant in the **Mercedes**

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<sup>a</sup> 2<sup>nd</sup> edition Oxford University Press (2005) at page 349 – Paul Barrie

case. In the absence of medical evidence to make a separate award for stress and trauma I make an elevated award of \$80,000.00 for pain and suffering and loss of amenities taking into consideration the obvious trauma and grief that the first claimant suffered upon the loss of her unborn child and the injuries to her two children in such sad circumstances. .

**The second and third claimants**

[17] The second and third claimants seek the sums of \$50,000.00 and \$70,000.00 respectively for pain and suffering and loss of amenities. The defendant in reply urged the court to make awards of \$30,000.00 and \$40,000.00 respectively instead.

[18] Both the 2<sup>nd</sup> and 3<sup>rd</sup> claimants are minors. The second claimant was 4 years old and the third claimant was 2 years old, at the time of the accident. In an assessment of damages the court must strive for a high measure of uniformity in making awards in comparable cases. The parties have not provided any authority in relation to damages suffered by minors. In **Sheena David et al v Kingston Bowen et al**<sup>9</sup>, the claimants were 16 and 12 years old respectively when they suffered injuries to their head and neck in a motor vehicular accident. Both claimants suffered neck pain and lower back pains. In that case both the parties and the court acknowledged the paucity of authorities on injuries involving children, and even greater paucity with those resulting in neck and back pain to allow for comparative analysis. Master Taylor-Alexander in the **Sheena David's** case awarded the sum of the sum of \$37,000.00 to the first claimant and the sum of \$35,000.00 to the second named claimant for general damages for pain and suffering and loss of amenities.

**Ronisha Foyle**

[19] The second claimant suffered two broken arms and head injuries at the time of the accident. She is still experiencing weakness in her arms and suffers headaches.

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<sup>9</sup> GDAHCV2007/0055 delivered 7<sup>th</sup> June 2013



She has keloid scars about her body and on her face which will affect her appearance and will become more conscious of when she grows up. The medical evidence reveals that the second claimant has recovered well from the injuries suffered at time of the accident but has been left with scars about her body with one prominent scar on her face from her scalp to eyebrow and a large keloid scar on her leg. She continues to experience headaches and pain and weakness in her two arms, they having been broken at the time of the accident. No evidence was given as to the likely future impact that the injuries may have on the claimant pecuniary prospects in keeping with the **Corniliac** principles. However I consider that the permanent facial scar, keloids and continuous pains in her arms will likely affect the claimant in the future. In the circumstances I make an award of \$35,000.00 for pain and suffering and loss of amenities to the second claimant.

- [20] The third claimant suffered severe head injuries and a skull fracture. She was rendered unconscious and remained in a coma for a number of days after the accident. She has difficulty with her mobility due to the dragging of her left leg, weakness on her left side, and has permanent keloids scars about her body. She also has speech deficiency. The claimant has weakness in her left side and difficulty walking and running as she drags her left leg. The third claimant also has difficulty in speaking. Upon review of the totality of the evidence and taking into consideration that her injuries were a lot more severe than the second claimant and the injuries in the **Sheena David's** case, I make an award of \$50,000.00 to the third claimant for pain and suffering and loss of amenity.

#### **Nursing Care**

- [21] The claimants seek an award of \$5,000.00 for each claimant for nursing care. The claimants alleged that since the accident Mr. Roland Foyle, the common law husband of the first claimant and the father of the second and third claimants, has been providing nursing care for the family. The claimants rely on the dictum in **Donnelly v Joyce**<sup>10</sup> where it was stated:

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<sup>10</sup> (1973) ALL ER 475

"In an action for personal injuries in an accident, a plaintiff was entitled to claim damages in respect of services provided by a third party which were reasonably required by the plaintiff because of his physical needs directly attributable to the accident; the question whether the plaintiff was under a moral or contractual obligation to pay the third party for the services provided were irrelevant; the plaintiff's loss was the need for those services, the value which, for the purpose of ascertaining the amount of his loss, was the proper and reasonable cost of supporting the plaintiff's need."

[23] The defendant although not disputing that the claimants are entitled to a reasonable sum in respect of nursing care submits that the claimants have failed to provide the basis in arriving at the respective sums of \$5,000.00 for each claimant. The defendant urged the court to pay a total sum of \$5,000.00 as a reasonable award in the circumstances. The defendant ask the court to bear in mind the dictum of Dillon L.J in **Mills v British Rail Engineering Ltd**<sup>11</sup> where he states that an award under this head is made in respect of "*care by relative well beyond the ordinary call of duty for special needs of the sufferer*".

The defendant submits that some discount ought to be applied to take into account the fact that Mr Foyle would have been assisting with household chores and the care of his common law spouse and children in any event.

[24] I am of the view that Mr. Foyle is entitled to compensation for nursing care. The injuries suffered by his common law wife and two children would indeed have been and continues to be an additional burden on his daily chores. Having regard to the nature of the injuries broken limbs, head injuries, stiffness of the neck and other injuries suffered by the claimants I make an award of \$8,000. 00 for nursing care in favour of Mr. Roland Foyle.

### **Special Damages**

[25] The claimants claimed the sum of \$13,112.10 as special damages of which the sum of \$12,554.60 was paid by the first defendant's insurers. The claimants now seek the balance of \$857.50 of the sum claimed together with an additional sum of

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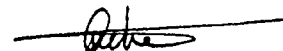
<sup>11</sup> (1992) P.I. Q.R. Q130 at Q137

\$375.00 for medical reports and consultation fee since the payment making a total of \$1232.50. The defendant does not object to the amount claimed.

**Order**

[26] In summary I make the following awards:

- (1) An award in the sum of following sums of \$80, 0000. 00 for general damages for pain and suffering and loss of amenities for Shaunette Thompson, the first claimant, with interest at the rate of 6% from the date of service of the claim to the date of judgment on assessment.
- (2) An award in the sum of \$35,000.00 to Ronisha Foyle, the second claimant, for general damages for pain and suffering and loss of amenities with interest at the rate of 6% from the date of service of the claim to the date of judgment on assessment.
- (3) An award in the sum of \$50, 000.00 to Laticia Foyle, the third claimant, for general damages for pain and suffering and loss of amenities with interest at the rate of 6% from the date of service of the claim to the date of judgment on assessment.
- (4) An award in the sum of \$8,000.00 for nursing care.
- (5) Special damages in the sum of \$1232. 50 with interest at the rate of 6% from the date of the judgment of assessment until payment.
- (6) Prescribed costs to the claimants in accordance with CPR 65.5 as amended.

  
Agnes Actie  
Master [Ag.]