

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE**

**(CIVIL)**

**ST. LUCIA**

**Claim No. SLUHCV2008/0805**

**BETWEEN:**

**ASCHELLE HIPPOLYTE**

Claimant

**And**

**JOANNE PAGE**

Defendant

**Appearances:**

Mrs. Wauneen Louis-Harris for the Claimant

Mr. Dextor Theodore for the Defendant

-----  
**2010 July 29 August 30**  
-----

**JUDGMENT**

[1] **REDHEAD J (AG):** The claimant, on 8<sup>th</sup> August 2008 filed a claim against the defendant claiming general and special damages as a result of the injuries she, the claimant, suffered due to the negligent driving of the defendant.

[2] The claimant in her witness statement says that the defendant was her co-worker. On 1<sup>st</sup> January 2007 she invited the defendant to her home to have a drink. They then went to a friend of the defendant in Rodney Bay. On 2<sup>nd</sup> January 2007 at about 4:30 am they were travelling from Rodney Bay towards Castries, Joanne

was taking her to her home. The claimant was then seated in the front seat of the motor vehicle PE 1671 in which they were travelling.

[3] The Claimant says it was very dark that early morning, the weather was dry. When they got to the top of hill in the Choc area she saw two headlights approaching in their direction. It appeared to be a vehicle coming from the opposite direction with great speed.

[4] According to the claimant Mrs. Page swerved to the side of the road. She lost control of the vehicle. She swung back hard onto the road. As a result the vehicle turned over several times across the other side of the road and then the vehicle went down a little slope, and turned over 4 times again.

[5] When the vehicle eventually stopped it was upside down. The claimant who is a licensed driver also said:

***“I saw the headlights the road had been widened. I did not expect to have this magnitude of an accident. There was enough space to go. I thought we would dally”***

[6] In my view the reason that Joanne Page was not able to manoeuvre her vehicle in the available space is because of the speed at which she was travelling. This is evidenced by the fact that the vehicle turned over several times even though it did not collide with the on coming vehicle.

[7] There is no doubt that Ms Page owed a duty of care to the claimant in that in the circumstance it was foreseeable that if she did not exercise due care the claimant would be injured. This Ms Page failed to do.

[8] The vehicle in which the claimant was travelling was badly damage as a result of the accident. She was pinned inside of the vehicle for sometime. The claimant was the only eye witness to the accident to testify before this court as to how the

accident occurred. The defendant, I am told left St. Lucia and is aboard and cannot be found. The driver of the other vehicle did not stop after the accident. The defendant's insurance, New India Assurance Co (Trinidad and Tobago Ltd), in subrogation filed a defence because the defendant left the country and remains aboard.

- [9] The claimant's evidence stands unchallenged. I find as a fact having regard to the testimony of the claimant, that the defendant was negligent. It is obvious to me that she was driving her vehicle at great speed, so much so that she was unable to successfully avoid the approaching vehicle. When she attempted to do so, she lost complete control of her vehicle. As a result the claimant was seriously injured. See *Richley v Farrell (Richley Third Party)*<sup>1</sup>
- [10] The claimant's lawyer submitted that the defence has admitted the liability of the defendant in a letter by the Chartered Insurance Brokers, Agostini Insurance Brokers (St. Lucia) Limited to the Manager of New India Insurance Company Limited. The letter states:

***"We have been trying fervently to contact Ms Page in the last few weeks. We now understands that she is no longer on island. However, we feel that if she were here she would have a change of heart regarding her responsibility for the accident. We have persued the report submitted by her and are of the views that she is responsible for the accident."***

- [11] The claimant was taken to the Victoria Hospital by ambulance. She remained there for 6 days. After her discharge from hospital, Dr. Davids attended to her daily. Then the claimant was readmitted to the hospital. She had a second surgery on her left hand. She spent another three weeks in hospital. I now refer to some of the medical report in this case.

<sup>1</sup>(1965) 3 All ER 109

- [12] A report from the Victoria Hospital signed by Dr. Davids, Senior House Officer, on behalf of Dr. Richardson St. Rose, Consultant Surgeon. The report states in part as follows:

***“Achelle Hippolyte, Age 25 years old. Female,***

- 1. she sustained crush injury with severe deformity of her left hand, 10cm transverse laceration palmar surface of the left hand at the level of the metacarpal - phalangeal joints and 4-6cm vertical laceration between the middle and ring fingers of the left hand.***
- 2. Visible laceration of thenar group of muscles.***
- 3. Radiological findings were, segmental comminuted fracture metacarpal of the left ring finger and proximal 3<sup>rd</sup> metacarpal of the left little finger. ...she had surgery, wound debridement internal fixation with K wire of the affected metacarpal bony tissue repair she had regular wound dressings (every other day). She made good progress and was discharged six (6) days later.***

- [13] As a result of the nature of her injury she had severe deformity of her left hand and needed corrective surgery.
- [14] Twenty eight days after her injury she had carpal tunnel decompression as a result of adhesive. Four months after her injury she had tendon elongation of the middle finger as a result of flexion deformity and about one year later she had soft tissue release and skin graft of the thumb and ring finger as a result of scar tissue formation and contracture of the thumb and ring finger.
- [15] During the course of her treatment she had physiotherapy: other analgesics, and antibiotics. As stated above, she had several corrective surgeries to improve the deformity of her left hand and this affected the effective use of her left hand.

[16] I refer to medical report of Dr. Horatias Jeffers, Consultant, Orthopedic Surgeon.

**“Opinion and progress**

- 1. Ms Hippolyte required extensive surgery to the left hand post injury.*
- 2. The surgical incisions and laceration of the injury would have required 6 to 8 weeks period for healing.*
- 3. Ms Hippolyte has not been able to return to work at the time ongoing sever lower back pain.*
- 4. The back pain is consequent on a severe jarring strain to the muscle – ligamentous tissue of the lower back.*
- 5. A A:C. T scan of the lumbosacrae spine was negative for fracture/dislocation of the spine.*
- 6. The acute episode of the lower back pain following the accident very likely to be consequent on a jarring trauma of a mild to moderate degree of severity to the lower back sustained during the accident.*
- 7. The jarring episode of the lower back is not expected to give rise to wear and tear changes (spondylosis) of the spine if it were to occur in the future.*
- 8. The jarring injury to the lower back pain post injury. However, the persistence of the chronicity of the ongoing symptoms is in part due to the body habitus of Ms. Hippolyte who is above her ideal weight for height.*

9. *It is not possible to determine a time frame during which the back pain would resolve, but a supervised programme of weight reduction and cardiovascular and physical fitness condition would assist in resolution of the chronic back pain.*
10. *The mild swelling of the finger joints of the left hand is expected to remain permanent to some degree but not usually on its own result in impairment digital function.*
11. *The injury to the fingers segments of the left hand has resulted in hypersensitivity of this digit to external stimuli and touch. The effect of hypersensitivity are worse soon after injury but are expected to improve over the next 3 years, but in some cases can remain permanent to some extent.*
12. *The mobility of the finger joints of the left hand has not improved inspite of an intensive and extended programme of physiotherapy.*
13. *The significant decrease in mobility of the finger joints is secondary to arthro fibrosis and tendon adhesions consequent on the traumatic injury of 3 January 2007.*
14. *No improvement mobility of the joints of the left hand is expected without surgical intervention this time.*
15. *Surgical treatment in the form of metacarpophalangeal, proximal and distal interphalangeal joint capsulectomy along with release of flex or tendon adhesive stand an 80% chance of significant improvement mobility and function of the joints of the fingers of the left hand.*

***16. In the absence of surgical treatment the deformity and impairment of the finger of the left hand will be permanent.***

***17. The persistence disclosure of the basal joints of the ring and the little finger metacarpals is expected to be permanent without surgical intervention and arthrosis of the dislocated joint may well develop in the future.***

***18. If this sequel ensues, symptoms in the form of fusion of the dislocated joints.***

***19. Ms Hippolyte has impairment in the ability to curl all the fingers of the left hand. The impaired digital joints motion constitutes a hand impairment of 24% which equals a right upper extremity impairment of 22%. The combined effect of the impaired motion of all the finger joints of the left hand constitutes a whole person impairment in performance of ADL of 13%.***

[17] I now turn to consider the question of general damages. In assessing general damages, I take into consideration (i) the nature and extent of the injuries sustained (ii) the nature and gravity of the resulting physical disability (iii) the pain and suffering which she had to endure and is enduring (iv) the loss of amenities suffered and (v) the extent to which, consequentially, the claimant's pecuniary prospects have been materially affected (*Cornilliac v St. Louis*<sup>2</sup>).

[18] According to Dr. Jeffers the claimant suffered:

***“1. Open fracture/dislocation of the 4<sup>th</sup> and 5<sup>th</sup> meta carpo-carpal joint of the left hand.***

***2. Open fracture of the 4<sup>th</sup> metacarpal of the left hand, and acute lumbosacral strain.***

- [19] She had surgery wound debridement internal fixation with wire of the affected metacarpal bones and soft tissue repair.
- [20] The claimant had five surgeries in all to her hand. In addition she was incapacitated and virtually helpless during the period of her recuperation.
- [21] The claimant said that she was in tremendous pain constantly. She said that she felt so much pain and discomfort that she had to support her injured hand with her right hand to bear the pain and because her injured hand was much too heavy to hold up without support due to the swelling.
- [22] Dr. Jeffers said that it is not possible to determine a time frame which the back pain would be resolved.
- [23] He also says that the mobility of the finger joints of the left hand has not improved inspite of intensive and extended programme of physiotherapy.
- [24] The claimant continues to have back pain. This causes long journeys to be uncomfortable. She is forced to take painkillers up to the time of trial.
- [25] I now examine comparable awards in order to guide me in arriving at an appropriate award.
- [26] In **Alexander v Monian**<sup>3</sup> the plaintiff aged 35 years a technician employed by National Petroleum. He suffered multiple injuries to his right arm including his shoulder and forearm.

*(a) He had a compound fracture of the mid, shaft of the right humerus, with about 2½ of the bone missing with gross laceration of the lateral aspect of the arm with extensive skin loss and multiple lacerations of the muscle of the right arm.*



*(b) Compound fracture of the right elbow involving the joint end and a fracture of the ulna. There was laceration of the right forearm 3 inches long about the mid-shaft and another at the distal end one inch long.*

[27] In 1972 that plaintiff was awarded \$70,000.00 general damages.

[28] In *Razal v Ramsingh*<sup>4</sup> the plaintiff aged 43 at the time of the accident. He suffered fractures at the major shaft, the humerus and at the middle shaft of the right ulna as well as the proximal ends of the phalanges of the 2<sup>nd</sup> and 4<sup>th</sup> fingers.

[29] The right arm was surgically amputated at the elbow. He was immobilised in plaster for more than one year. In 1971 he was awarded \$23,040.00 general damages.

[30] On behalf of the defendant, Learned Counsel referred to the following:

**“Alexander Baptiste”**<sup>5</sup>

*The claimant who sustained a crash forefinger which left it in a hooked position with remaining glass splinters pain and numbness was awarded TT\$15,000.00 in 1994. adjusted to April 2007 that translates to TT\$27,280.00 which is approximately E.C.\$10,912.00.*

**George v Tobago United Co-operative Society Ltd**<sup>6</sup>

*The claimant who had aggravated a pre existing spondylosis leading to pain in the lower back was awarded TT\$2,850 in 1988. adjusted to April 7<sup>th</sup>, 2007 that translates to TT\$8,180.00 which is approximately \$3,272.00.*

<sup>4</sup> 1360 of 70 Civil Appeal Trinidad & Tobago

<sup>5</sup> Vol. No. 7 The Lawyer Trinidad and Tobago

<sup>6</sup> The Learned 1988 Trinidad and Tobago

- [31] Martin Alphonse and Dennis Alphonse et al and Deodat Ramnath<sup>7</sup>. In 1996 the Court of Appeal awarded the respondent in that matter \$45,000.00 general damages with interest at the rate of 5 per centum per annum from date of service of writ 23 March 1992 to date of trial on 6 of June 1995.
- [32] In the instant case the claimant was 25 years old at the time of the accident. She was at the time employed as a Senior Media partner of Dove Productions Ltd. She earned a salary of \$2,500.00 per month. She was in receipt of \$500 per month travelling allowance and monthly commission of \$500.00.
- [33] She was also employed on a part time basis with:
- (a) Hot FM Communications Ltd as a Sales Representative with a monthly commission of \$550.00.
  - (b) Daher Broadcasting Services (DBS) as a Sales Representative at an average monthly commission of \$400.00.
- [34] The claimant says that she was unable to go to work for 30 months. In cross-examination she testified on oath that towards the end of 2008 to 2009 she tried to go back to work but because of the pain she was unable to do so because she could not get out of bed on time because of the pain.
- [35] In her statement of claim she has claimed as loss earnings \$75,000.00 from Dove Productions, \$16,500.00 from Hot FM Communications and \$12,000.00 from Daher Broadcasting Services. Total loss would have been in the region of \$133,500.00. From this must be deducted \$11,473.56 because the claimant received a total of 10 payments from National Insurance Company totalling this amount. The sum due therefore for loss earnings, I calculate to be \$122,027.44.
- [36] The claimant's total average monthly salary prior to the accident was \$4,450.00. Having regard to the evidence, the claimant's average monthly salary would now

be reduced to about \$2,500 per month in other words this would now be the earning capacity of the claimant, multiplied by 12 which is equivalent to \$30,000.00 per year as loss earnings.

[37] Learned Counsel for the claimant suggests in her skeleton arguments that the multiplier of 16 be used.

[38] In **Martin Alphonse et al v Deodat Ramnath**<sup>8</sup> (Supra) the Court of Appeal accepted that on an analysis of nine other unreported authorities from the region showing comparable injuries and the multipliers for a 26 year old the multiplier was 9.

[39] Singh J.A. also observed at page 13:

*“In determining the multiplier a court should be mindful that it is assessing general damages and not special damages. There is evaluating prospects and it is a once and for all and final assessment. It must take into account the many contingencies, vicissitudes and imponderables of life, it must remember that the plaintiff is getting a lump sum instead of several small sums spread over the years and that the award is intended to compensate the plaintiff for money he would have earned during his working life but for the accident (see Franklyn Lloyd v Phillip<sup>9</sup>).*

[40] Bearing the above in mind I shall use a multiplier of 10 to calculate loss income which is \$300,000.00. In keeping with the above stated principles, I shall discount that figure by 5 percent giving a figure of \$245,000.00.

[41] Finally the claimant says that her hand was deformed as to a result of the accident I have seen her hand. She claims that she is now engaged to be married. Because of the deformed hand she is ashamed to show off her ring.

<sup>8</sup> at page 13

<sup>9</sup> High Court Civil Suit 79 of 1992 (St. Kitts and Nevis)

[42] I assess general damages as follows:

Loss of earnings	\$122,027.44
Loss of earnings capacity	\$245,000.00
Damages for pain, suffering and	
Loss of amenities	\$ 90,000.00

[43] The claimant made a claim for items which she lost and some new items which she had to purchase as a result of the accident. These are allowed. The total costs of which are \$15,245.00. Estimate costs of surgery to release tendon adhesion and joint reconstruction of fingers on left hand \$18,990.00 as advised by Dr. Jeffers. Estimated costs of reconstruction of dislocated basal joints of ring and little finger metacarpal left hand as advised by Dr. Jeffers \$10,290.00

Total estimated cost of surgery	\$29,280.00
Special Damages	\$44,525.00

[44] The claimant is therefore entitled to judgment as follows:


**General damages**

Loss of amenities pain and suffering	\$ 90,000.00
Loss of earning capacity	\$245,000.00
Loss of wages	\$122,027.44
Special Damages	\$ 44,545.00
Estimated costs of surgery	<u>\$ 29,280.00</u>
Total	<u><u>\$530, 481.44</u></u>

[45] There will be judgment for the claimant in sum of \$530,481.44.

[46] Interest on that sum at the rate of 5 percent per annum from the date of service of the claim form 8<sup>th</sup> August 2008 to date of trial 29<sup>th</sup> July 2010.

[47] Costs to the claimant on a prescribed costs basis.

  
-----  
**Albert Redhead**  
**HIGH COURT JUDGE(AG)**