

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE

SUIT NO. GDAHCV2009/0383

BETWEEN:

AUGUSTINE SAMUEL ANTOINE

CLAIMANT

AND

THE ATTORNEY GENERAL OF GRENADA

DEFENDANT

Appearances:

Derrick Sylvester together with Cherelle Bain of Counsel for the Claimant

Adebayo Oluwu of Counsel for the Defendant

25th February 2014

DECISION

- [1] **TAYLOR-ALEXANDER, M:** This claim comes on for assessment of damages for the personal injury suffered by the claimant. Augustine Antoine alleges that he was sitting at his shop at La Borie on the morning of the 11th March 2009 when he came under attack by plain clothes police officers armed with guns. The claimant, assuming he was under attack by armed bandits responded defending himself by throwing his cutlass after the police officers. It succeeded only in hitting the lattice work on the shop counter. This nevertheless prompted a reaction from the police officers and according to

the pleading of the claimant he heard a loud noise, felt a sharp pain to his back and he fell down bleeding. He was taken to the hospital and was admitted in a stable condition with mild bleeding where he was treated initially in the outpatient clinic for a gunshot wound. He had been shot and the bullet had entered his lower back and hit through the left flank on the anterior abdominal wall. The claimant underwent laparotomy as a precaution, as the bullet had entered the abdominal cavity. The laparotomy did not reveal any organ damage inside the abdominal cavity. His external wounds were dressed and he was kept at the male surgical ward for an undisclosed period of time, as although his general evolution was good he developed complications such as paralytic ileus and some weakness of his lower extremity likely secondary to damage to branches of sciatic nerve. When he was discharged he was forced to use a walking aid. In 2011 he was examined by Dr Joseph Mc Auley, who concluded that the claimant sustained extreme neurological injury involving the left sciatic nerve of the left lower extremity and would have to use a walking aid permanently.

- [2] The claimant claims special damages totalling \$484.25 and general damages for trespass to property, assault and battery, exemplary and or other damage.

Special Damages

- [3] The claimant claims for loss for medicine of \$259.25 and physiotherapy of \$225.00. The claimant in his affidavit in support of assessment alleges that he incurred additional expenses but acknowledges that he is incapable of proving those. It is trite law that special damages by their nature are required to be pleaded particularised and proven. The sums of \$425.00 have been proven from receipts that are self-explanatory and are attached to the claim and referred to by the claimant in his evidence. I therefore allow the sum of \$425 in special damages.

Preliminary Issues

- [4] The defendant challenges the reliance by the claimant on a further medical report of Dr. Joseph Mc Auley, on the basis that it was introduced late in the proceedings; no leave was sought for its introduction; and it is evidence on which that the defendant has not had the opportunity of cross examination.
- [5] The obligation to disclose is a continuing one, until the proceedings are concluded. If documents to which that duty extends come to a party's notice at any time during the proceedings, the proper course is to disclose it. It seems to me that is what was done. Being at the stage of assessment of damages the court's obligation is to do justice between the parties. An updated medical report is one way to ensure that this is done. The defendant chose not to take advantage of its right to examine the doctor, even where this could have mitigated any potential prejudice. I find no basis to exclude the medical report, and I have duly considered its relevance in the assessment of general damages.
- [6] The claim for trespass presents a challenge. This is a case where judgment was entered in default. The evidence however, bears out that the police were in lawful execution of their duties when they entered the claimant's property. There really is no basis for an action in trespass and it would be unconscionable for me to award a sum for trespass on the basis of the default judgment. I have therefore declined to consider a case for trespass.

General Damages

- [7] The claimant submits that the sum of \$250,000.00 is appropriate to compensate him for his pain and suffering and \$65,000.00 for loss of amenities. He relies on a number of authorities including:—

(a) **Patrick Morille v Paul Pierre** SUHCV1994/0596; (b) **Laura Marroco v The Attorney General** ANUHCV0240/1997 (c) **Anita Tobbit v Grand Royal**

Antiguan Beach Resort Limited & Stanford Frederick ANUHCV2006/0026; Ronald Fraser v Joseph Dalrimple ANUHCV2004/0513; Gloria Lake v Antigua Commercial Bank ANUHCV2004/0513.

[8] The defendant relies on the following authorities:—

(a) **Laura Marroco v The Attorney General** ANUHCV0240/1997; (b) **Adrian Wilson v Celison Stephen** GDAHCV0540/2001; (c) **Christopher Flermius v Andre Solomon** SLUHCV1041/2002, (d) **Sylvena Morson v Leron Lewis** ANUHCV2005/0166, (e) **Randy Jmes v Leroy Lewis** et al of the high court of Antigua and (f) **Marcel Fevrier & Anor v Bruno Canchan &Ors** SLUHCV 1989/0313 (g) **CCAA Limited v Juius Jeffery** Civil Appeal 10 of 2003.

[9] In **Wright v British Railways Board** (1932) 2AllER 698 at 699 Lord Diplock explained the court's role in its assessment of damages. He said:—

"non-economic loss constitutes a major item of damages. Such loss is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that justice meted out to litigants should be even handed instead of depending on idiosyncrasies of the assessor whether by jury or judge the figure must be basically a conventional figure derived from experience and from awards in comparable cases".

I have considered all of the authorities provided. I have accounted for the differences in the circumstances of the various cases, the differences in the pain and suffering and the differences in the loss of amenities, and accounted for similarities where these existed. The claimant asks for the court's consideration of his inability to earn an income as a farmer as a results of his injuries. I did not accept the claimant's evidence that he was a farmer by profession. It remains the claimant's obligation to prove his loss and I was

unimpressed by the total lack of evidence other than the claimant's own evidence of his lifestyle as a farmer. His evidence was unconvincing.

- [10] Having considered the evidence, submissions and authorities, I award the claimant the sum of \$80,000.00 for pain, suffering and loss of amenities.

Exemplary Damages

- [11] I make no award for exemplary damages. This is ordinarily an exceptional remedy, and in my view reserved for the most reprehensible behaviour. The evidence bears out that this is a case where the police had been in the execution of their duties and things went horribly wrong after the claimant perceiving he was under attack and unaware that the persons were police officers retaliated resulting in the police opening fire. I find there to be no compelling evidence for an award of exemplary damages. **Broome v Cassell** (1972) A.C 1027 at 1082 was considered and applied. For the reasons I have provided, I am also constrained to award aggravated damages.

- [12] In conclusion, I award the claimant the sum \$425.00 in special damages and the sum of \$80,000.00 in general damages. I make no award for aggravated damages and no award for exemplary damages. Interest is awarded on special damages and general damages from the 11th March 2009 to the date of Judgment at 3% per annum and post judgment at the rate of 5% per annum until payment in full. Costs are awarded at 60% of the prescribed costs for an award of \$7328.25.

V. GEORGIS TAYLOR-ALEXANDER
High Court Master