

EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT & THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2002/0506

BETWEEN:

BRENTLIE CHARLES AKA BRENTLEY CHARLES

Claimant

and

MARCUS CORRIDON

Defendant

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Ms. Nicole Sylvester of counsel for the claimant

Mr. Samuel Commissiong of counsel for the defendant

2014: June 3;

JUDGMENT

Part Heard and on Written Submissions

[1] **ACTIE, M. [AG.]:** This is an assessment of damages for personal injuries as a result of a motor vehicular accident.

Background

[2] The claimant claims damages against the defendant for personal injuries sustained when he was knocked down by a motor vehicle owned and driven by the defendant on 13th June 1998.

[3] Bruce Lyle J entered judgment on liability on 29th October 2010 against the defendant with damages to be assessed.

The Evidence

[4] The claimant was 21 years old at the time of the accident. The claimant sustained a broken leg and was taken to the Milton Cato Memorial Hospital where he was admitted and remained unconscious for three (3) days.

[5] The claimant's injuries are outlined in several medical reports of Dr. De Freitas, Dr. A Salian and Dr. Charles Woods. The gravity and resulting physical disability of the claimant's injuries is outlined in the reports of Dr. Charles Woods, a witness for the claimant who provided evidence-in-chief and was also cross examined by the defendant at the assessment hearing.

[6] Dr. Woods in his first report dated 12th March 2002 states that the claimant who was unconscious on first admission on 13th June 1998, sustained multiple trauma to his head and body, including a large laceration to the left leg with bony deformity. X-rays revealed compound fractures of the left tibia and fibula. The claimant underwent surgery for debridement of the compound fracture and was subsequently taken to the intensive care unit where he remained for three days in a semi-comatose state. Upon recovery of consciousness he was transferred to the surgical ward and continued with traction to the leg. Open reduction and plating of the tibia fracture was done on 25th June 1998 and the claimant was discharged on 13th July 1998. The claimant developed swelling and drainage from the wound site and was readmitted on 21st April 1999 for removal of the tibial plate. The claimant continued to suffer swellings, discharge and formation of a chronic ulcer of the left leg. X-Rays done in November 1999 showed osteomyelitic changes in the tibia with a diagnosis of chronic osteomyelitis secondary to infection.

[7] The claimant was admitted on several occasions for debridement of the leg.

Dr. Woods concluded that full recovery of the claimant's leg was uncertain, and would most probably be faced with further surgical procedures.

- [8] Dr. Woods in his second report dated 16th July 2004, states that the ulcer reopened on the anterior leg and proceeded to drain in a small amount of purulent material subsequent to a procedure done on 18th September 2009. Dr Woods concluded that the claimant had developed a relapse of his osteomyelitis and would need further investigation and most likely a repeat sequestrectomy in the very near future. Dr. Woods in his prognosis states:

"as with all cases of chronic osteomyelitis the prognosis for a cure is very poor, and despite all surgical efforts it is very likely that Mr Charles will have lifelong problems with chronic infection of his tibia as a result of the injuries he sustained to the left limb. He will require multiple surgical procedures in an attempt to resolve this situation"

General Damages

- [9] The legal principles governing the assessment of damages are well established in the seminal case of **Cornilliac v St. Louis**¹ where Sir Hugh Wooding, CJ listed the main factors to be taken into account namely (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities, if any; and (v) the extent to which pecuniary prospects are affected. General Damages are damages which will be presumed to be a natural or probable consequence of the wrong complained of; with the result that the claimant is required only to assert that such has been suffered.

The nature and extent of the injuries sustained

- [10] The claimant sustained multiple trauma to his head and body, including a large laceration to the left leg with bony deformity was unconscious on admission to the hospital. The claimant had compound fractures of the left tibia and fibula and underwent surgery for debridement of the compound fracture. The claimant was

¹ (1965) 7 WIR 491

subsequently taken to intensive care unit where he remained for three days in a semi-comatose state.

The nature and gravity of the resulting physical disability

- [11] The claimant has been in continuous pain and discomfort since the accident. Dr. Woods both in his reports and on examination-in-chief states that the claimant regardless of further management will most likely have lifelong recurrent problems with wound infection due to osteomyelitis of the left tibia. The claimant has been readmitted on several occasions with a diagnosis of chronic osteomyelitis secondary to infection with discharge of purulent smelling fluid.

The pain and suffering endured

- [12] The claimant has been readmitted several times for surgical procedures for recurrent problems with wound infection and osteomyelitis of the left tibia since the accident.

The loss of amenities

- [13] The claimant states that the accident has left him experiencing a change in personality from vibrancy to despondency. The claimant complains of continuous pain on a daily basis since the injuries 15 years ago. The wound has had to be drained to remove small amounts of foul smelling fluids due to an infection. The claimant was an outgoing community oriented person but has withdrawn especially when the symptoms flare up and is a cause of severe social embarrassment. The claimant who enjoyed swimming, playing football, cricket and basketball is said to be deeply traumatized and suffers from Post-Traumatic Stress Disorder. The claimant's ability to stand, walk for long periods, walk on inclined surfaces or run has been greatly affected. The expert witness statement of Asha Blucher states that the claimant is depressed and scarred both physically and mentally as a result of the accident.

Submissions

- [14] Counsel for the parties relies on several authorities. The claimant seeks a global award of \$376,200.00 for pain and suffering and loss of amenities and also claims special damages and loss of future earnings.
- [15] In **Sherma Mathurin V Rain Forest Sky Rides Ltd**²- Georges J in 2010 awarded the sum of \$150,000.00 for pain and suffering and loss of amenities to a 28 year old female who suffered a displaced intra-articular open fracture of the low end of the right tibia with a fracture of the fibula due to freefalling 40ft a guide line to the forest floor. The claimant underwent surgery for fixation of the plates and screws along with bone drafting.
- [16] In **Patrick Morille v Paul Pierre et al**³:- Cottle J made an award of \$80,000.00 for pain and suffering and loss of amenities to a claimant who had a broken tibia and fibula with infection of the fracture requiring multiple and extensive surgical interventions. The claimant remained in hospital for extended period of time before being discharged.
- [17] In **Kendol Fredericks v Carlton Cunningham**⁴:- Cottle J in 2009 made an awarded of \$150,000.00 to a claimant age 12 who suffered extensive and severe injuries to his leg which was crushed by the defendants truck. The tibia was fractured and exposed. The claimant underwent surgery. Post-surgery diagnosis stated satisfactory range of the left knee and ankle, mild tenderness of the ankle, and a high risk of precocious development of osteoarthritis of the knee and ankle.
- [18] Counsel for the claimant states that the injuries and prognosis in the case at bar are more severe than the authorities cited. Dr. Woods in his reports and on examination-in-chief, states that the injuries of the claimants are lifelong requiring continuous care. Under cross-examination Dr. Woods states that the resulting

² SLUHCV 2008/0551 3rd August 2010.

³ SLUHCV1994/0596 delivered on 28th February 2008.

⁴ SVG HCV 2002/475 delivered on 21st July 2009.

decision may be amputation if the wound continues to breakdown as a result of the infection. Counsel for the claimant in further submissions filed on 9th December 2013 seeks a provisional award for the risk of amputation. Counsel relies on the authority of **Chewings v Williams & Anor**⁵. I note that the court in **Chewings** case had to determine whether the claimant had established on the balance of probabilities that there was a more than fanciful chance that at some definite or indefinite time in the future the claimant would suffer an amputation as a result of his injury. This issue did not come for determination in the case at bar rather Dr surmised amputation as a possibility if there is a continuous breakdown in the wound as a result of the infection.

[19] An award of damages for pain and suffering is incapable of exact estimation and an assessment must necessarily be a matter of degree based on the facts of each case. Lord Hope of Craighead in **Wells v Wells**⁶ 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 in with similar awards in comparable cases as represents the Court’s basic estimate of the plaintiff’s damage”.

[20] I have considered the authorities and I note in particular the authority of **Kendol Fredericks v Carlton Cunningham**⁷ from this jurisdiction where Cottle J in 2009 made an awarded of \$150,000.00 for pain and suffering and loss of amenities to a claimant who at the age of 12 years suffered extensive and severe damages to his left leg. The claimant in that case underwent two surgical procedures and spent ten weeks in hospital. **Kendol’s** medical prognosis opined that there were only localized signs of chronic infection of the wound exposing the underlying bone with a possibility of the development of osteomyelitis. In the case at bar, Dr Woods in his report dated 10th April 2001 states that the claimant needs the services of a skilled plastic surgeon and would better served having these procedures done

⁵ [2009] EWHC 2490

⁶ [1998] 3 All ER 481

⁷ SVG HCV 2002/475 delivered on 21st July 2009

overseas. The same procedure was recommended and performed in the **kendol's** case.

[21] I accept that the claimant's condition is more severe than the **kendol's** case and the other authorities cited. The evidence states that the claimant has been in constant pain and suffering since the accident fifteen (15) years ago. The impact of the accident left the claimant unconscious and he remained in an unconscious state for three days. The claimant has been hospitalized several times since the accident and has had several surgical procedures for debridement of the wound. Dr. Woods both in his reports and in examination-in-chief was forthright and clear in his diagnosis of the claimant. It is accepted that the claimant's continuous pain and suffering will be lifelong with the possibility of amputation if the infection continues.

[22] The evidence indicates that the claimant's quality of life has been severely impacted by the injuries suffered as a result of the accident. The claimant, 21 years at the time of the accident, was in the prime of his life. He can no longer enjoy swimming, playing football, cricket and basketball. The claimant is said to be deeply traumatized and suffers from Post-Traumatic Stress Disorder as a result of the accident. The evidence of Dr. Woods makes reference to possible future medical expenses and procedures. I also take into consideration the rate of inflation since the award made by Cottle J. in 2009 in the **Kendol's** case. Having regard to the severity of the injury, the recurrent and contemplated surgical procedures required and bearing in mind the evidence of the continuous pain and suffering for the past fifteen (15) years. I conclude that an award of \$ 250,000.00 consisting of \$150,000.00 for pain and suffering and \$100,000.00 for loss of amenities would meet the justice of this case.

Pecuniary Loss – Future loss of earnings

[23] The claimant was 21 years old at the time of the accident. The claimant states that since the accident he is unable to continue enjoy his congenial employment

as a farmer. He states that the accident has made his life financially difficult as he has lost his capacity to earn and support his three dependent children

[24] It is the claimant's contention that he earned \$650.00 a month prior to the accident. The defendant objects to the claimant's assertions in the absence of evidence. The defendant avers that the claimant in his statement of claim states that he was a painter but has since changed his occupation to farmer. I note that amount claimed is unsubstantiated. However, I accept the injuries of claimant's have severely impacted his earning capacity whether as a painter or a farmer. I also take into consideration that it has been over 15 years since the injuries. The nature of the claimant's injuries would not allow him to continue his profession as a painter since the evidence indicates that he cannot stand for an extended period. The change to a more sedentary life of a farmer is not farfetched.

[25] Pecuniary loss generally forms the principal head of damage in personal injury actions. It consists primarily of pre-trial earnings and prospective loss of earnings commonly called loss of future earnings. As **McGregor on Damages 18th Edition**⁸ states:

"the function of the pecuniary heads of loss is to ensure that the claimant recovers, subject to the rules of remoteness and mitigation, full compensation for the loss that he has suffered". The general method of assessment is the well-known multiplier/multiplicand method applied by taking the amount which the claimant has been prevented by injury from earning in the future (multiplicand) and multiplying it by the number of years during which he was expected to earn it (multiplier). To reach a figure for the award of a lump sum, the normal method of assessment which is used by the courts, is first to calculate, as accurately as possible, the net annual loss suffered, which is usually based on an average of the claimant's pre-accident "take-home" pay. This is to be used as the multiplicand.

[26] In the absence of evidence to substantiate the claimant's assertion I would propose a nominal amount of \$500 per month giving a multiplicand of \$6000.00 with a multiplier of 15. Accordingly an award in the sum of \$90,000.00 is made for future loss of earnings.

⁸ At paragraph 35-056.

Special damages

[27] It is a well-established principle that special damages must be pleaded and proved; see **British Transport v Gourley**⁹ and **Heerallal v Hack Brothers (Construction) Ltd**¹⁰. The claimant claims for loss of earnings in the sum of \$31,200.00. The defendant objects to the unsubstantiated claim for loss of earnings. As indicated previously a party will not be shut out completely for lack of evidence. The court would usually make a nominal award in the absence of evidence. Accordingly I would allow a pre-trial loss of earnings to be calculated at a nominal rate of \$500 monthly from 13th June 1998 to June 2002 making a total award of \$26,937.25 in special damages.

Conclusion

- [28] In the final analysis an award is made to the claimant as follows:
General Damages - Pain and Suffering \$100,000.00; Loss of Amenities \$150,000.00; Loss of Future Earnings - \$ 90,000.00; Special Damages \$ 26,937.25, making a global award of \$366,937.25.
- [29] Interest at the rate of 3% is awarded on special damages from the date of injury to judgment and at the rate of 6% from judgment until payment
- [30] Interest at the rate of 3% for the award of Pain and suffering and Loss of amenities from the service of the claim until judgment and at the rate of 6% from judgment until payment.
- [31] The claimant is entitled to prescribed costs in accordance with CPR 65.5.

Agnes Actie
Master [Ag.]

⁹ (1953) 3 All ER 803

¹⁰ (1977) 24 WIR 117