

ST VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)



CLAIM NO 41 OF 2012

BETWEEN:

MERCEDES DELPLESCHE

Claimant

AND

SAMUEL EMMANUEL DE ROCHE

Defendant

Appearances

Mr Cecil A. Williams for Claimant
Defendant absent despite service

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2013: April 16; 19
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JUDGMENT

Introduction and background

- [1] **LANNS, M:** This is an assessment of damages in a personal injury claim.
- [2] On 1st September 2009, the Claimant Mercedes Delplesche was standing on the side walk of a public road in Little Town, Kingstown when she was struck down by a motor vehicle owned and driven by the Defendant Samuel Emmanuel De Roche.
- [3] The Claimant was admitted to the Female Surgical Ward at the Milton Cato Memorial Hospital on the day of the accident, and was discharged four days later. Following her discharge from the hospital, she attended at the outpatient clinic for physiotherapy sessions.
- [4] At the hospital, the Claimant was seen and examined by Dr Bary Aussi, General Surgeon. According to Dr Aussi's Medical Report dated 9th February 2010, the Claimant sustained the following injuries:

- a) Trauma to head and left knee
- b) Abrasions to face;
- c) Laceration to forehead, nose and lower lip
- c) Bleeding from left nostril.

[5] Dr Aussi further stated in his Medical Report, the Claimant had improved, but the accident left scars to her forehead and face.

[6] The Claimant was also seen by Dr C. Woods, Consultant Surgeon at the Milton Cato Memorial Hospital. In his Medical Report dated 12th April 2011, Dr Woods stated that on examination, the Claimant complained of pain in the right side of her neck, lower back and knee. He further stated that X-rays revealed Degenerative Disease of Lumbar Spine, and he recommended further evaluation. There is no suggestion that the Degenerative Disease of the Lumbar Spine was caused by the accident, but nothing turns on this.

[7] There is no updated medical assessment. It is the Claimant who has given an update on her condition.

[8] In her Witness Statement dated 27th March 2013, the Claimant stated that she now suffer from severe pains in her lower back, head and knee which make it difficult for her to walk properly and stand for any long period. She further stated that before the accident she used to work as a Home Assistant but she cannot now work because of the pains she suffer. She states that she still needs physiotherapy care but she cannot afford it. She stated further that she attends the doctor whenever she gets the money and she would be given prescriptions to help ease the pain but sometimes she does not have the money to buy the tablets. As to how the injuries have affected her social life, the Claimant stated that she used to enjoy taking long walks and attending cultural events with friends but she can no longer do these things.

[9] There is nothing in the Medical Reports, and there is no medical evidence which indicates or suggests that the Claimant's injuries would make her incapable of continuing to work as

a Home Assistant, or at all. Dr Aussi's Report dated 9th February 2010 indicates that the Claimant had improved, and as previously indicated, there is no updated medical assessment. The record shows that the last assessment was done on or about 12th April 2011. There is no medical evidence before the court as to what, if any progress the Claimant has made from that date to present.

[10] On 17th February 2012, the Claimant commenced an action against the Defendant claiming special damages, general damages, costs and further or other relief.

[11] The issue of liability was determined on 31st July 2012, when Judgment in Default of Acknowledgement of Service was entered up against the Defendant for Special damages in the sum of \$22,615.00 and for general damages to be assessed. This assessment therefore relates to general damages only.

[12] I am satisfied that all relevant documents in respect of the assessment have been served on the Defendant and that he has failed to respond thereto, or to attend the assessment hearing.

The assessment

[13] I am mindful of the fact that in the assessment of general damages, the court should strive for a high measure of uniformity of awards as is reasonably practicable, considering first of all awards in comparable injuries given in this jurisdiction, and further afield if necessary, from jurisdictions with similar social and economic conditions. Counsel has not referred me to any case from St Vincent and the Grenadines containing the general level of awards of damages. From my research, I find the following to be useful guides, though the injuries are not the same:

- (1) **Carter v St Clair Latham** Claim No 524 of 2005, in which the High Court of St Vincent and the Grenadines in 2006, awarded \$60,000.00 for pain and suffering to the Claimant whose leg was amputated after a tractor rolled over him. Further, the court awarded \$50,000.00 for loss of amenities to the Claimant who was an avid footballer and practiced judo in his spare time.

(2) **Dwight Mayers v Carl Williams and Shell Antilles and Guianas Ltd** Claim No 29 of 2002, the High Court of St Vincent and the Grenadines in 2006, awarded \$80,000.00 for pain and suffering and loss of amenities to the Claimant who had his dominant hand crushed between two boats and 2 fingers amputated.

(3) **CCCA v Jeffrey**, in which the Court of Appeal awarded \$40,000.00 to the Claimant for pain and suffering and \$40,000 for loss of amenities; for a traumatic amputation of his left thumb, compound fractures of the 4th and 5th meta carpal bones with lacerated flexor tendons on the 4th and 5th fingers.

(4) **Avaline O'Garro et al v Neil Ross et al**, Claim No 329 of 2004 in which this court in 2010 awarded the Claimant \$100,000 as general damages for pain and suffering and \$40,000 for loss of amenities. The Claimant in that case was involved in a vehicular accident. As a result of the accident, she sustained a fracture of the acetabulum with dislocated right hip and all range of motions to the right hip was restricted and very painful.

The Claimant was hospitalized for one month at the Milton Cato Memorial Hospital. She was placed in skin traction and rehabilitated with crutches. Following her discharge from the hospital, she attended at the outpatient clinic and the orthopedic surgeon on a monthly basis.

[14] I am not of the view that the injuries sustained by the Claimant in this case were as serious as the injuries sustained by the Claimants in the cases cited above from this jurisdiction ; or in the cases from other jurisdictions cited by learned counsel Mr Williams, including;

(1) **Madissa Jacob v Boniface Romulus and Reynold Jr Louis** – Claim No SLUHCV2006/0457; in which the High Court in St Lucia in July 2010 awarded the 20 year old Claimant \$60,000 as damages for pain and suffering and loss of amenities for abrasions to the left side of her face, forehead , back of right elbow, left hand and back of her left shoulder; contusion to the lower rib cage,

communited fracture of the mid shaft of the humerus; traction neuropia of the left medial nerve as a result of a vehicular accident.

(2) **Anita Tobit v Grand Royal Antiguan Beach Resort Limited and Stanford Frederick** - Claim No ANUHCV2006/0026; which referred to the case of **Celia Hatchett v First Caribbean International Bank, BVIHCV2006/227** – a case in which the Court awarded the 46 years old Claimant US\$24,000.00 or EC\$52,000.00 for pain and suffering and loss of amenities in a case in which the Claimant suffered degenerative disc disease at LS – 51 with herniations.

[15] At the time of the accident, the Claimant in the instant case was 54 years old; she is now 57. Counsel has suggested a figure of \$80,000.00 as a reasonable sum for pain and suffering and loss of amenities. I am not of the view that that this case warrants that large amount, because, as previously indicated, the injuries were not as serious as the injuries in the other cases, although the Claimant is said to be carrying scars to her face and forehead, which I have taken into account in this assessment.

[16] UPON considering the evidence and submissions filed in this matter; AND taking into account the age of the Claimant, the nature of the injuries sustained by her, her physical disability, the pain and suffering endured by her; her loss of amenities; AND THE COURT BEING GUIDED by cases within and without this Territory, DOTH AWARD the Claimant the sum of \$65,000 as general damages for pain and suffering and loss of amenities, together with interest at the rate of three per cent per annum from the date of service of the Statement of Claim (that is 23rd February 2012) to date of judgment on assessment (being 19th April 2013).

Post judgment Interest

[17] The Claimant is entitled to post judgment interest on the sum of \$65,000.00 at the statutory rate of six per cent per annum from the date of service of the Claim to date of final payment

Costs

[18] The Claimant is entitled to costs as prescribed under CRP 65.5

Conclusion

[19] It is hereby adjudged that the Defendant Samuel Emmanuel De Roche do pay to the Claimant Mercedes Delplesche

[1] \$65,000.00 as general damages for pain and suffering and loss of amenities, together with interest at the rate of three per cent per annum from the date of service of the Statement of Claim (that is 23rd February 2012) to date of delivery of judgment on assessment (being (19th April 2013).

[2] Post Judgment Interest at the rate of six percent per annum from the date of judgment on assessment to date of final payment.

[3] Costs as prescribed under CPR 65.5 Appendices A and C in the sum of \$5,850.00.

[20] I am grateful to counsel for his assistance.


PEARLETTA E. LANNS
MASTER