

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

ANTIGUA AND BARBUDA
CLAIM NO. ANUHCV2007/0725
BETWEEN:

ANNIE BENN

Claimant

AND

COMMUNITY FIRST COOPERATIVE CREDIT UNION LTD

Defendant

Before:

Master Cheryl Mathurin

Appearances:

Ms Kamilah Roberts for the Claimant

Ms C Debra Burnette for the Defendant

2009: July 29th,

October 20th

ASSESSMENT OF DAMAGES

- [1] **MATHURIN, M:** On the 11th June 2007, the Claimant (Ms Benn) was exiting the premises Old Parham Road, St.John's when she slipped and fell causing injuries to her neck, shoulder and lower back. The Credit Union accepted liability for the accident and agreed to the special damages claimed in the sum of \$2,330.00. This court is being asked to assess the general damages that Ms Benn is entitled to and the parties have filed evidence and submissions in support of the assessment. The parties have agreed to rest on the written representations made to the court in support of the assessment.

- [2] Both Parties in submissions have referred me to the well known principles enunciated in the case of **Cornilliac v St Louis** (1965) 7 WIR 491 on the considerations to be borne in mind by the Court in assessing general damages; these include the nature and extent of the injuries sustained, the nature and gravity of the resulting physical disability, the pain and suffering experienced, the loss of amenities if any and the extent to which pecuniary prospects are affected.
- [3] The Court also bears in mind the principles in **Heeralall v Hack Bros.** (1977) 15 WIR 117, that an award of compensation must be fair to Ms Benn for what has happened to her through the admitted negligence of the Credit Union and fair for the Credit Union to pay for that negligence. Such damages cannot be perfect compensation, but it will be fair compensation for her injuries and for the social, economic and domestic consequences to her.
- [4] Ms Benn suffered injury to her neck, shoulders, lower back and hips and these injuries are consistent with the medical reports attached to the claim. It is also evident from these medical reports that she has had intermittent pain as a result of the injury for in excess of a year and has treated the injuries through medication and physiotherapy which she asserts gives her relief.
- [5] In her affidavit in support of this assessment, Ms Benn reiterates the pain that she experiences as a result of the unfortunate accident in 2007. She talks of the pain in her neck and lower back which makes normal activities such as lying down and sleeping and walking and standing up difficult. She laments that during these painful episodes, she is unable to drive herself and finds that she is unable to attend to her normal household chores such as laundry, sweeping and tidying up and gardening. She states that her physical activities are curtailed during these times. Ms Benn states that she has been advised by medical personnel that she will have to endure pain and discomfort for the rest of her life on an intermittent basis and this will be able to be alleviated through physical therapy and heat treatments and pain killers as well as exercises and massage.

[6] The final medical report submitted by Ms Benn was prepared by Dr Henry Bedaysie on the 10th June 2009 and he determined that her cervical spine was impaired at 8% and her lumbar spine was impaired at 11%. Dr Bedaysie defined impairment as “the loss of use of, or derangement of any body part, system or function. It is an objective, and therefore measurable, decrement in one’s health status.” He recommended conservative management of mild therapy and swimming with a review at the next visit. It is unfortunate that the report does not assist in outlining and explaining the effects of this impairment.

[7] The quantification of general damages does not require disclosure by the court of the breakdown of the global award but it is important and necessary that the above heads be consciously borne in mind when making an appropriate award. The compensation must as far as possible put a claimant in the same position she would have been in had the accident not occurred. The Court must give regard to recent comparable awards in its own and other jurisdictions with a similar social and economic climate to assist it in its determination of the quantum of damages.

[8] The parties have submitted the following authorities with others to assist the court in its determination in assessing the quantum of damages to be awarded to the claimant in this matter.

Excerpt from **Guidelines for the Assessment of General Damages in Personal Injury Cases; 8th Edition, Oxford University Press**

Celia Hatchett v First Caribbean International Bank & Azim Edward
BVIHCV2006/0227

Middlebrook v Rathbone

Gloria Edwards v Central Marketing Corporation SKBHCV 2000/0088

[9] I have had regard to the evidence and medical reports of the claimant and submissions of both counsel. I have noted the authorities that the parties have submitted in support of their submissions. I have taken into account the criteria to be considered in assessing

compensation and noted the fact that the Claimant continues to suffer intermittent pain and discomfort which limits her normal activity more than two years after the accident. In all the circumstances, I am of the view that an award under the head of general damages of \$40,000.00 is reasonable.

[10] I have considered the submissions on the award of interest and am not satisfied that the circumstances outlined by the Defendant are sufficient that I should exercise my discretion to award a reduction of the normal award of interest in these matters. As such I would order that interest on the special damages be awarded at the rate of 2½% per annum from the date of the claim (11th December 2007) to the date of this judgment and interest on the general damages at 5% from the 11th December 2007 to the date of judgment.

[11] Ms Benn is entitled to the prescribed costs of this action which are determined in accordance with Part 65 of the Civil Procedure Rules. These costs amount to \$12,082.50 which are discounted by 60% in consideration of the admission of liability and assessment of damages. Costs therefore will amount to \$7,249.50.

[12] It is ordered as follows;

1. That Ms Benn is awarded \$42,330.00 in damages comprising \$40,000.00 as damages for pain and suffering and \$2,330.00 as agreed special damages.
2. Interest at 2½% per annum is awarded on the special damages from 11th December 2007 to the date of assessment.
3. Interest at 5% on the general damages from 11th December 2007 to the date of assessment.
4. Costs in the sum of \$7,249.50



**CHERYL MATHURIN
MASTER**