

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **SLUHCV2016/0404**

Between

VIANNA LONGVILLE

Claimant

AND

**Windjammer Landing Company Limited
Windjammer Landing Company St. Lucia (1992) Limited
Elgin Holdings Ltd
Windjammer Landing Villa Beach Resort**

Defendants

Before:

Ms. Agnes Actie

Master

Appearances:

Mrs. Andra Gookool-Foster of counsel for the claimant

Mrs. Cheryl Goddard of counsel for the defendants

2017: March 13

Judgment

1. Ms. Vianna Longville, 37 years old, an employee of the defendants, sustained injuries during the course of her employment when one of the glassware she was washing broke and cut the inner part of her wrist. On 2nd August 2016, Ms. Longville obtained judgment in default of Acknowledgement of Service for an amount to be decided by the court. The matter now comes on for the assessment of damages.
2. The defendants failed to comply with the timelines of CPR 12.13 and therefore the assessment will be conducted in accordance with established guidelines and authorities.
3. Dr. Horatius Jeffers, in a medical report dated 15th April 2014, detailed Ms. Longville's injuries as follows :
 - a 10 centimeter laceration to the front of her left wrist with multiple tendon injuries and arterial injury

- Complete division of the ulnar artery some 3 cm from the wrist joint.
- Complete division of the flexor carpi's ulnaris, almaris longus and flexor carpi radials tendons some 4 centimeters from the wrist joint.
- Complete division of the flexor digitorum profundus and flexor digitorum superficial tendons to each of the fingers ;
- A less than 30% division of the flexor pollicis longus.

Ms. Longville underwent a surgical procedure and was discharged two days post-surgery with scheduled outpatient follow up consultations. Her left forearm was place in plaster of paris case for a period of 4 weeks post-surgery.

4. In a report dated 10th April 2014, Ms. Longville was reported to have had very little discomfort without any tightness or swelling below the elbow cast. Ms. Longville commenced intensive physiotherapy for restoration of range of motion of the joints of the fingers along with a muscle strengthening programme. The report states that Ms. Longville would not have been able to perform her tasks as a house keeper or engaged in sporting or leisure activities for a minimum of eight (8) weeks from the date of the injury.
5. In a report dated 20th May 2015, Dr. Richardson St Rose stated that Ms. Longville's left wrist was stiff and flexion range was 0-80%. The report stated that the joints of the fingers were stiff and full flexion was not possible rendering the inability of the finger tips touching the palm of the left hand. The report also noted a marked decrease of sensation along the median nerve with diminished sensation along the radial nerve as the nerve was partially or completely severed. Full finger flexion was not restored in spite of physiotherapy. Dr. St Rose concluded that Ms. Longville had 40 % disability of her left hand and would be unable to return to her active duties.
6. Ms. Longville avers that she was a national netballer in her youth and represented St. Lucia both locally and overseas. She avers that she was an avid netball player up to the date of the incident and can no longer participate in the sport due to her deformity.

Special Damages:

7. Ms Longville claims special damages in the sum of \$4715.00 comprising of the following:

Costs of medical report and transportation

- (1) Medical reports and consultation fee totaling \$350.00
 - (2) Transportation costs from Canaries to Dr Jeffers office at Tapion for 13 days at \$13.00 per day from 2- April 2014- 14th April 2015 totaling \$ 169.00
 - (3) Transportation from canaries to Tapion Hospital for therapy sessions from 2nd April 2014 to 14th April 2015 for 150 days @\$13.00 per day totaling \$ 1950.00
 - (4) Transportation from canaries to Dr Richardson's st Rose's office in Castries for 2 visits totaling \$26.00.
8. It is trite law that special damages must be specifically pleaded and proved. However, the court in recent times have accepted reasonable and informed estimations as proof in the absence of contrary evidence to make an award for special damages.
9. The consultation and medical report fees were substantiated and are accordingly allowed. The sum claimed for transportation was not supported by receipts. However, the court takes judicial notice that receipts are not usually issued by operators of public transport. The court in the absence of palpable evidence may allow an award which is not unreasonable. Accordingly, I am of the view that the sums claimed for transportation is reasonable in the circumstances and is awarded as claimed.

Care Giving and House Keeping

10. Ms Longville avers that she was unable to perform her usual chores in caring for herself and her two minor children. She avers that she has difficulty washing and cooking since the injury. She stated that she obtained paid housekeeping services from Williana Duncan at the rate of \$80.00 per fortnight for 12 months.

11. In **Donnelly v Joyce**¹ it was stated that:

“In an action for personal injuries in an accident, a plaintiff was entitled to claim damages in respect of services provided by a third party which were reasonably required by the plaintiff because of his physical needs directly attributable to the accident; the question whether the plaintiff was under a moral or contractual obligation to pay the third party for the services provided were irrelevant; the plaintiff's loss was the need for those services, the value which, for the purpose of ascertaining the amount of his loss, was the proper and reasonable cost of supporting the plaintiff's need.”

12. Ms. Longville provided an invoice to confirm the receipt of the payments over the time period claimed. Having regard to the nature and extent of the injury, I am of the view that the amount claimed under this head is not unreasonable in the circumstances. I accordingly allow the sum of \$1920.00 as claimed under this head.

Legal Fees

13. The claimant claims the sum of \$400 for legal fees comprising of \$300.00 for costs of consultation and a letter and \$100.00 for process serving. The amounts claimed are not substantiated by evidence. The court in the absence of proof may award a nominal sum to compensate for the sum claimed. Accordingly, a nominal sum of \$200.00 is awarded under this head.

Total Special Damages

14. The total sum of \$4615.00 is awarded as special damages with interest at the rate of 3% from the date of the incident to the date of judgment and at the rate of 6% from the date of filing of the claim to the date of payment.

General Damages

15. The claimant claims general damages for pain and suffering and loss of amenities in the sum of \$102,113.45.

¹ (1973) ALL ER 475

16. General damages are usually determined by taking into consideration the principles set out by Wooding CJ in the seminal case of **Cornilliac v St Louis**² namely (1) the nature and extent of injuries suffered; (2) Nature and gravity of the resulting physical disability; (3) Pain and suffering endured; (4) Loss of Amenities;(5) extent to which the claimant's pecuniary prospects have been affected.
17. An award of damages for pain and suffering and loss of amenities is incapable of exact estimation. The court must strive for consistency by using comparative cases tailored to the specific facts of the individual case. Lord Hope of Craighead in **Wells v Wells**³ 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 with similar awards in comparable cases as represents the Court's basic estimate of the plaintiff's damage”.
18. The court is usually guided by comparative awards made in jurisdictions having similar social and economic conditions.
19. The claimant referred the court to several authorities emanating from the United Kingdom along with the case of **Byron William v David Howe** emanating from the Commonwealth of Dominica. **Byron Williams** was attacked with a cutlass and suffered a 15cm longitudinal wound to posterior aspect of shoulder;10 cm trauma wound to flexor surface of wrist involving flexor digitorum profundus superficially to 2nd and 4th fingers. He was hospitalized for 9 days and underwent two surgical operations. During the first surgery, the lacerated tendons and the median nerves were sutured. The claimant was given antibiotics and analgesics. He attended the outpatient clinic for 8 months post-surgery and then underwent a second surgery to reopen the wound as the tendons were too tight. At the date of assessment, the claimant had a cyst growing on the hand and further surgery was required for the removal of the cyst. The court, in 2012, awarded the sum of \$20,000.00 for pain and suffering and loss of amenity.
20. In making an award for general damages, I am guided by the decision in **Kathleen McNally v Eric Lotte and CITCO (BVI) Ltd** , Rawlins J. as he then was states;

² Cornilliac v St Louis (1965) 7 WIR 491.

³ [1998] 3 All ER 481

“The practice is to grant a global sum for general damages for pain and suffering and loss of amenities, considering these against the background of the nature and extent of the injuries sustained and the nature and gravity of the resulting impairment and physical disability.”

21. The purpose of compensation is to put a claimant as much as possible in the same position he/she would have been in had the accident not occurred. I considered the injuries and the award made in 2012 in the **Byron Williams** case. I am of the view that the injury and resulting disability in the extant case is more severe and especially the impact on Ms Longville’s social life as an avid netball player. I also take into consideration the economic conditions and inflation since the award was made in 2012 and will accordingly award the sum of \$40,000.00 for pain and suffering and loss of amenities.

Future Loss of Earnings

22. Ms. Longville claims for future loss of earnings in the sum of \$420,000.00 using the multiplier/multiplicand method. The method takes 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 she was expected to earn it (multiplier).
23. It is the evidence that Ms. Longville returned to her employment on short term contracts in the housekeeping department receiving the same pre-accident salary. However, she was relegated to menial chores as a result of her injuries and disability. Ms. Longville states that she is presently on a short term contract which will end in April 2017 and is apprehensive about her future pecuniary prospects, if her employment is terminated.
24. A claimant is entitled to recover damages for a handicap on the open labor market when he/she can show that as a result of the injuries there is a real risk that he/she will be out of work and will have to obtain similar employment. The conventional approach where the claimant has suffered injury but has regained employment at the same pre-accident wage is for a traditional lump sum award to be made using a multiplier of the annual earnings of the claimant. The multiplier is to compensate for the disability while the claimant is still in steady employment, with no greater risk of

having that employment terminated than in any other work.⁴

25. McGregor on Damages⁵ states:

“The amount which the claimant is awarded may not be the amount which he would have continued to earn in the future. It will often be the case that the claimant’s earnings would have increased over the years as he progressed in his career, and this factor has always to be taken into account: conversely, the court in other cases will have to take note of the fact that the claimants’ earnings are liable to diminish in the future, as where he was in an occupation with a high rate of unemployment..... Again, there is the possibility that the earnings which the claimant is now making may be cut down because the injury has depreciated his/her value as an employee, for a partial disability frequently does not affect a man’s wages or salary immediately but nevertheless puts him at a disadvantage in the labour market should he have to look for fresh employment “

26. In **Lau Ho Wah v Yau Chi** ⁶, the appellant suffered significant brain damage with consequential permanent impairment of both his physical and mental capacities. He received treatment in hospital and as an outpatient for about 10 months. He managed to find employment at a higher weekly wage than his pre-accident earnings; and was so working at the time of the hearing. The Privy Council held that the claimant was entitled to compensation for his loss of earning capacity despite the fact that he had obtained employment in which he earned more than at the time of the accident. Such a recovery would protect him from the risk of subsequently finding himself thrown on the labour market with a then genuine earnings loss.

27. Mc Gregor on Damages at para 38-095 states

“ Where the claimant continues in employment but disadvantaged in the labour market as a result of the injuries, an alternative course is to make a separate award for this head of damage distinguishing between the loss of actual earnings- of which there will be none if the claimant has continued in employment at the same salary as formerly and the loss of earning capacity represented by the by the physical handicap produced by the injury”.

⁴ Smith v Manchester 1974 1 CA

⁵ 19th edition page

⁶ Privy Council Appeal No. 20 of 1985

28. It is the evidence that Ms Longville suffered 40% disability in her left hand but continued in employment at the same pre-incident wage. The defendants as employers having accepted her disability assigned her menial tasks. Her scope for possible promotion in her department may now be non-existent having regard to the disability. It is obvious that her earning capacity has diminished and would be severely hampered if she loses her present employment and seeks alternative employment in housekeeping. I take into consideration the claimant's age, the fact that she is not totally handicapped and the general principle of mitigation. In keeping with the conventional approach, I am of the view that a multiplier of 5 would compensate for loss of earning capacity. Accordingly, the claimant is awarded a sum of \$84,000.00 comprising of her annual earnings of $\$1400.00 \times 12 = 16,800.00 \times 5 = \$84,000.00$.

Aggravated Damages

29. Ms. Longville seeks aggravated damages in the sum of \$15,000.00. CPR 8.6 (3) requires a claimant who seeks aggravated/exemplary damages to state so in the claim form. The claimant failed to satisfy this requirement and also failed to provide the ground upon which she seeks such an award. Accordingly the amount claim is refused.

Order

30. In summary and for the foregoing reasons, the claimant is granted the following awards:

1. Special Damages in the sum of \$4615.00 with interest at the rate of 3% from the date of the incident to the date of judgment and at the rate of 6% from the date of filing of the claim to the date of payment.
2. General Damages for pain and suffering and loss of amenities in the sum of \$40,000.00 with interest at the rate of 6% from the date of the judgment to the date of payment.
3. Loss of future earning capacity in the sum of \$84,000.00 with interest at the rate of 6% from the date of judgment until payment.
4. Prescribed Costs on the global sum in the sum of \$11,146.12 in accordance with CPR 65.5.(3).

**AGNES ACTIE
MASTER**