

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2007- 02359

BETWEEN

MARVA HAREWOOD

Claimant

and

TRADING AND DISTRIBUTION LIMITED

Defendant



Before Hon. Madame Justice C. Pemberton

Appearances:

For the Claimant: Mr. George

For the Defendant: Mr R. Nanga

DECISION

[1] On September 10, 2003, the Claimant, Ms. Marva Harewood, suffered physical injuries when she slipped and fell on a piece of cloth on the floor at Hilo Food Stores, St. Augustine one of a chain of supermarkets owned and operated by the Defendant. The parties entered a consent judgment on the issue of liability with damages to be assessed. These damages now fall to be assessed.

[2] (A) **GENERAL DAMAGES**

In assessing general damages factors must be taken into consideration¹.

These factors include:

¹ Wooding C.J. in Cornilliac v. St. Louis (1965) 7 W.I.R. 491 at page 492 Letters G-H

- (a) the nature and extent of the injuries sustained;
- (b) the nature and gravity of the resulting physical disability;
- (c) pain and suffering;
- (d) loss of amenities; and
- (e) the extent to which pecuniary prospects were affected

[3] **(1) The Nature and Extent of the Injuries Sustained:**

Ms. Harewood stated in her Statement of Case that her injuries suffered by this fall include:

- (a) a torn and disrupted posterior-cruciate ligament of the right knee;
- (b) OA changes in right knee with Bakercyst;
- (c) grade 1 intrasubstance changes in the posterior horn of medial meniscus joint effusion;
- (d) 25% permanent partial disability; and
- (e) Persistent pain in the area of the injury.

After Ms. Harewood fell, the Emergency Health Unit was called to attend to her. The next day she continued to experience excruciating pain and was taken to the Arima Health Facility. Due to continuing and persistent pain, Ms. Harewood was referred to Dr. Terry Ali and a MRI scan of the right knee was done. The MRI scan revealed the torn post-cruciate ligament of the right knee. Ms. Harewood was also treated by Dr. David Toby who administered 4 steroid injections on various occasions in an attempt to alleviate the pain. It is clear that Ms. Harewood suffered injuries from her fall.

[4] **(2) The Nature and Gravity of the Resulting Physical Disability:**

As a result of the injuries suffered, Dr. Toby stated that Ms. Harewood will need to continue therapy. Dr. Toby opined on the possibility of future surgery in order to correct the cruciate ligament. He diagnosed Ms. Harewood as suffering a 25% permanent partial disability. Ms. Harewood's injuries do appear to be serious and have produced physical disability.

[5] **(3) The Pain and Suffering Endured:**

Ms. Harewood stated that she suffered extreme pain for several months after the incident and continues to suffer pain even now, though significantly diminished.

[6] **(4) The Loss of Amenities Suffered:**

The bulk of the evidence falls to be discussed under this head. Ms. Harewood stated that due to her injuries she experiences discomfort while driving; when in air conditioned environments or in cold weather. Ms. Harewood is unable to sit, squat, stoop, kneel or drive for long periods because of the pain she experiences in her knee. Standing for long periods of time is also extremely painful and this has affected her ability to perform as a teacher.

[7] Ms. Harewood further stated can no longer enjoy her usual social activities such as dancing or going to the gym. Her ability to stand at functions in order to socialize had diminished. She continues to experience challenges with her mobility due to the incident. Dr. Toby noted that if Ms. Harewood does not repair the posterior cruciate ligament she will eventually develop arthritis in the injured area.

[8] **(5) The Effect on Pecuniary Prospects:**

Ms. Harewood stated that her injury affects her ability to perform efficiently as a teacher as she is unable to stand for long periods of time. Ms. Harewood, who was 49 at the time of the incident, is currently still employed as a teacher.

[9] **AUTHORITIES**

Cases Considered:

In evaluating the compensation which should be attributed to the Claimant the Court considered cases submitted by both parties.

1. Mr George and Mr Nanga both referred me to **RAMSDEN V. BHEEN**, H.C.A. No. S1433 of 1990. In this matter the plaintiff was a 22 year old clerical officer who suffered knee and ankle joint injuries in a motor vehicle. Like Ms Harewood, that plaintiff was treated at hospital and discharged after a few hours. Similarly, the pain persisted after treatment. The plaintiff was diagnosed with severe stretching of the posterior cruciate ligament of the knee. His extra curricular activities, including walking and climbing stairs, were severely affected because of his limited mobility due to the injury and he was diagnosed with 12% partial permanent disability. Mr Ramsden was also high risk for developing degenerative arthritis which may require future surgery. In July 1992 the Court awarded the plaintiff in this matter \$40,000.00 in general damages.

2. Mr George referred to the following cases of **BALDEO V. PRESTIGE CAR RENTALS LTD. & ORS.**, H.C.A. No. 442/00 and Lucio v. St. George West County Council, H.C.A. No.3047/74. In **BALDEO V. PRESTIGE CAR RENTALS LTD. & ORS.**, an 18 year old pedestrian was injured. She was admitted to the hospital with serious wounds to the back of her knee involving all major blood vessels and nerves. Her initial hospital stay lasted for 6 days. She returned 2 days later when she was kept for a further 9 days. Her injuries included a ruptured anterior ligament of the knee, a ruptured posterior ligament in the knee and severe damage to the lateral peroneal nerve of the knee. All internal and external ligaments of the knee were ruptured. As a result of her injury the plaintiff had no control over her foot and suffered from drop foot. Plaintiff underwent surgery after 9 months and 7 months later was able to walk only 100 yards before stopping because of the severe pain. Plaintiff required a knee brace and crutches at all times. Plaintiff was diagnosed with 40% partial permanent disability and under went 3 more surgical procedures in an attempt to repair the posterior cruciate ligament, the collateral ligament and the foot drop.

The plaintiff was awarded \$155,000.00 in general damages. The plaintiff in matter was much more severely injured than Ms. Harewood in that she was not admitted to hospital and did not require surgical procedures to correct immediate effects of the injuries.

3. In **LUCIO V. ST. GEORGE WEST COUNTY COUNCIL**, H.C.A. No. 3047/74, a 78 year old female gardener slipped and fell on a bush left on the roadway by the Defendant. The plaintiff underwent 1 corrective surgery of a distal fragment of the left patella. Ms Lucio recovered but was left with 10% permanent partial disability and left knee flexion of 45%. 4 ½ years after the incident the plaintiff still experienced some pain. She no longer works as a gardener and walks with a walking stick. General damages in the amount of \$17,600.00 were awarded.
4. Mr Nanga referred me to **SEEPERSAD V. PERSAD AND CAPITAL INSURANCE**, Privy Council Appeal No. 86 of 2000 at paragraph 15, highlighting the fact that the Privy Council expressed reservations in regard to updating figures when determining the award of damages, a caution which is considered by this Court.

[10] **ANALYSIS AND CONCLUSION**

General Damages

After careful review of the cases put forward by both Counsel and applying the five factors which affect the award of general damages to this matter, I find that in Ms. Harewood's case, damages are recoverable for pain and suffering and loss of amenities.

- [11] There was no evidence to show the effect of the injury on Ms. Harewood's ability to remain in her current job and function effectively. No evidence is submitted to the Court to show that Ms. Harewood has been absent from work due to her injuries, or that she has been unable to teach her classes due to the pain she experiences. Ms. Harewood has also failed to submit

evidence which would show that her ability to work as a teacher has been greatly reduced as a result of her injury. As a result of the lack of evidence on this issue the Court is not confident to include this head for consideration.

[12] Courts generally award a global sum for general damages even though the evidence under each of the heads is analysed. Having reviewed the facts and evidence and considered the relevant authorities, I therefore will award **General Damages in the sum of \$75,000.00.**

[13] **(B) SPECIAL DAMAGES**

In assessing special damages in this matter, it is imperative that the Claimant prove these damages by leading evidence of costs claimed.

Ms. Harewood's claim for special damages supported by receipts is as follows:

(a) Cost of visit to Dr. Ali 22/9/03	\$	140.00
(b) Cost of visit to Dr. Ali 10/10/03	\$	100.00
(c) Cost of visit to Dr. Ali 17/10/03	\$	200.00
(d) Cost of visit to Dr. Toby 12/11/03	\$	200.00
(e) Cost of visit to Dr. Toby 19/11/03	\$	250.00
(f) Cost of visit to Dr. Toby 26/11/03	\$	250.00
(g) Cost of visit to Dr. Toby 16/12/03	\$	200.00
(h) Receipt for medication 25/9/03	\$	22.00
(i) Receipt for medication 21/11/03	\$	46.00
(j) Receipt for medication 28/11/03	\$	46.00
(k) Receipt for medication 8/12/03	\$	46.00
(l) Receipt for MRI Scan 13/10/03	\$	<u>3,050.00</u>
Total	\$	<u>4,550.00</u>

I award Ms. Harewood **Special Damages in the amount claimed of \$4,550.00.**

[14] **INTEREST**

The interest on general damages at a rate of 9% per annum from the date of service of the Statement of Case on August 20, 2007 until the date of judgment and thereafter, at the rate of 12% per annum from the date of judgment until payment on the judgment.

Special damages at a rate of 6% per annum, from the date of the accident to the date of judgment, and on the judgment sum at the rate of 12% from the date of judgment to the date of payment.

[15] **COSTS**

Ms. Harewood would be entitled to costs on the prescribed scale in the sum of **\$11,946.00**.

IT IS HEREBY ORDERED AS FOLLOWS:

The Defendant do pay to the Claimant Damages assessed as follows:

- General Damages in the sum of **\$75,000.00** together with interest at the rate of **9%** per annum from the date of service of the Claim Form until the date of judgment and thereafter, at the rate of **12%** per annum from the date of judgment until payment.
- Special Damages in the sum of **\$4,550.00** together with interest at the rate of **6%** per annum from the date of the accident until the date of judgment and thereafter at the rate of **12%** per annum from the date of judgment to the date of payment.
- Costs to be paid by the Defendant to the Claimant prescribed in the sum of **\$11,946.00**
- Stay of execution 28 days.

Dated this 30th day of September 2009.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE