

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO CV2013-04657

BETWEEN

GAIL LOVELL

Claimant

AND

AMANDA RAMSAWAK

First Defendant

MOTOR ONE INSURANCE COMPANY LIMITED

Second Defendant

JOSEPH HOPKINS

Third Defendant

Before: Master Alexander

Delivery date: May 03, 2019

Appearances:

For the Claimant: Mr Rennie Gosine instructed by Ms Renisa Ramlogan

No Appearance for the Defendants

DECISION

INJURIES

1. The claimant suffered serious multiple injuries in an accident that occurred on January 15, 2012. These injuries included fractures to the right 6th to 9th ribs with a collapsed lung; cervical spinal injury; right pulmonary contusions; blunt chest trauma with right haemothorax; right abdominal trauma; right forehead injury; chipped tooth in the right lower jaw and multiple lacerations. These lacerations were to the forehead, right heel, right arm, and right and left legs. Because of these injuries, the claimant suffered extensive scarring to diverse areas of her body. These included a 2cm vertical scar to the forehead and a 4cm x 1.5cm hypertrophic scar to the right anterior chest, at the inferior mammary fold, due to chest drain. There were also a 3cm vertical scar to the right arm; a 4cm longitudinal scar to the right arm; a 3cm scar to dorsum of the right foot; a 4cm diameter eschar to the side of the right heel; and a pigmented scar across natal cleft (buttock) attributed to hospitalization. Apart from the major scarring, she experienced pains in the chest and rib areas as well as emotional and psychological trauma.

ACCIDENT

2. At the material time, the claimant was a passenger in the first defendant's motor vehicle registration number PBP 5950, which was proceeding in an easterly direction along 8th Street, Five Rivers in the vicinity of the intersection of Tonca Bean Avenue and 8th Street. In the accident, she also lost her 9-year-old daughter, Bryanna Robertson, who at the time was in the vehicle with her. It would appear that the claimant and her daughter, who were on their way to visit her mother in Arouca, entered the private car, owned by the first defendant, but being driven by Mr Anthony De Coteau. A collision occurred at a major road with motor vehicle

registration number HAT 5678 owned and driven by the third defendant. On March 16, 2017, Charles J entered judgment on liability against the first defendant, and the claimant withdrew against the other defendants.

GENERAL DAMAGES

3. For injuries sustained in this accident, the claimant was entitled to an award of damages to put her back in the position that she would have been in prior to the visitation of the civil wrong upon her. The methodological roadmap, used to assess the award of damages for these injuries, was mapped out in *Cornilliac v St Louis*¹ and as informed by the other usual standard principles² governing this exercise.

(a) The nature, extent and gravity of injuries and any resulting disability

4. The injuries sustained by the claimant have been set out above and so accepted as constituting the full nature, extent and seriousness of her physical injuries. From these injuries, she developed bedsores and experienced breathing problems. The breathing problems would disrupt her sleep at night and she would wake up gasping for air. She claimed also that she was initially unable to digest food and would experience constant vomiting. She suffered also with frequent migraine headaches and dizzy spells. At the assessment, the claimant sought to give evidence of continuing psychological and emotional trauma, including anxiety and depression, from her daughter's demise, for which she was receiving treatment. There was no plea related to this but there was medical

¹ *Cornilliac v St Louis* (1965) 7 WIR 491

² These principles include, but are not limited to, *restitutio in integrum* and that damages should be full and adequate *Fair v London and North Railway* (1869) 1WR 66, 21 LT 326. Damages must also be in a monetary value that is fair and reasonable for the injuries sustained *Heil v Rankin* (2000) PIQR 187 at 199. Further, damages are assessed once and for all so the lump sum must approximate full compensation or as near as possible.

evidence that went in that referred to her depression. Further, in response to a question by the court, she indicated that she could not turn her neck to look backwards but has to make a whole body turn, as the muscles behind the neck were stretched preventing her from making that movement.

(b) Pain and suffering

5. The claimant alleged that her pains have continued and were being experienced on a daily basis. According to her, *"it's real pain"* she has been experiencing, which was being managed with medication. In describing her pain and suffering from her chest injury, the claimant, in response to a question posed by this court, stated that the pains remained persistent up to today. Further, with her two lungs having collapsed, she still suffered shortness of breath and would have to be rushed back to the hospital if she were to suffer any distress. It was clear that several years after the accident, the claimant's medical condition remained fluid, so was not stabilized as yet. In fact, Dr Santana confirmed that she had not reached maximum medical improvement, by indicating in his report that he still has an assessment to perform on her.

6. In describing the pains from her spinal injury, she stated that she wore a plaster on her back to manage that, because now her spine was curved. She testified that she was on medication for her physical pains, and for depression. She also gave evidence that one of her broken ribs was close to her heart, so she ran the risk of puncturing her heart by performing the simple act of bending. She stated, *"and then the ribs, the ribs had broken and this one that broke to the heart here ... this, I can't even bend down. If I bend down, it will stick me because the calculus on the bone that aint drop*

off as yet.” She averred sincerely, and without any attempt to overstate, that she had suffered agonizing physical pain and, when combined with the pain of losing her daughter, it was unbearable. She stated that she woke up at the hospital on the day following the accident in severe pain and that she observed many tubes running from her body. Since then, her pains have lessened to intense but manageable, however, their continuing severity has affected her lifestyle. At the assessment, she reiterated in oral testimony that she was still in the throes of ongoing pain but that she had made steady and good progress since the accident.

7. As a witness, this court was impressed with her truth telling; she presented her evidence in a forthright and honest way. She never sought to embellish the physical and emotional agony that would undoubtedly have accompanied her injuries. She explained that her physical pains were severe and constant and it was only when she gave evidence of having lost her daughter in the accident, she wept uncontrollably. There was no evidence before the court magnifying that particular emotional agony, save the reference to her depression, but this court concluded that the severity of her physical pain would have been a lesser match than the mental suffering undergone from the loss of her daughter. There was medical evidence of her depression and in the context of this accident, this court accepted her suffering in this aspect also. Her evidence that she pursued psychological counselling to deal with this loss was accepted. Given her physical injuries, it was accepted that her pains would have been excruciating initially, then graduated to a decreasing level of intensity but would still be continuing. She would no doubt suffer and have to live with some continuing form of pain for the rest of her life. Both in her witness statement and oral testimony, she pointed to the ongoing chest pains and it would appear that it remained the most challenging aspect of her

suffering. This court was satisfied on the evidence that the claimant had experienced physical, emotional and psychological pain from the accident, and that her suffering continued, albeit on a somewhat reduced scale.

(c) Loss of amenities

8. The debilitating effects that flowed from her pains have been documented in her evidence in chief. She stated, "*[T]he injuries I sustained still affect me at present. I experience chest and back pain. I also have difficulty in walking and in climbing stairs due to the injury I suffered to my heel. In addition, I visit the psychiatric clinic in El Dorado every two months. These visits are to help me deal with the death of my daughter. After the accident and my daughter's death I go through periods of anxiety and depression. I experience anxiety attacks on a regular basis.*" She gave evidence further that, after the accident, she was on constant bed rest for approximately one year and that it took her about two years to fully regain the ability to move around unaided. During this period, she would have suffered restrictions in her usual domestic activities. In fact, she averred that she had challenges with standing and walking and was unable to cook or clean and required domestic assistance. As to the restrictions on her ability to walk in the year 2012, she stated in her oral evidence that this was affected also by the fact that her heel was cut off. When asked to clarify, she stated thus, "*The heel had a big laceration that take piece of the heel off and then I had a laceration to the foot, close to the knee that they didn't stitch*" allegedly because she might not have survived. She described her current position thus, "*I have the chest tube scar because I have a chest tube and one on my forehead, and the same scar on my leg that they didn't want to stitch. Then one on the heel that they didn't want to stitch and they stitch it half way and it had a big piece of galvanize remaining in it. So that*

started to decay the foot so they had to unstitch it and leave it open and let it heal. But it heal.” While detailing her injuries to the court, she never hesitated to admit that some of them were healed, thus improving her ability to function in certain areas. As of the assessment, she was still experiencing challenges with moving around, though she could do so unaided at this point. She also stated in her oral evidence that her husband, children and sister still assisted with the domestic chores. She gave no other evidence in chief as to how her immobility influenced her social and other activities or examples of the drastic changes endured, but this court inferred that her initial physical restrictions would have limited her involvement in all spheres of her life. In fact, in response to this court, she admitted that her life was changed dramatically since the accident, and the traumatic impact had stolen both her daughter and her life as she knew it then. Thus, this court accepted that the claimant’s pains and limitations were continuing, and that her life would have been significantly altered by this accident.

(d) Loss of pecuniary prospects

9. The claimant suffered significant erosion of her pecuniary prospects. It has been seven years after the accident, and she has not worked or been able to earn a living. Given her injuries, this court accepted that she suffered such a loss and was likely to face ongoing pecuniary challenges, so will look to the medical evidence in discussing same below.

CASES

Counsel for the claimant relied on three cases to support his suggested award of \$250,000.00 for her pain and suffering. The first case was ***Nigel***

Mayers v The Attorney General³ where \$250,000.00 was awarded as general damages inclusive of an uplift for aggravated damages. In ***Nigel Mayers***, there was unchallenged evidence as to the nature and extent of the injuries arising from several gunshots, one to his left leg and multiple times in the chest area. The injuries included two punctured (collapsed) lungs, a broken rib and laceration to the thigh. He was in a coma for two days and spent approximately thirty-five days at the Chest Clinic at Mount Hope. In treating him, tubes were inserted into his chest; and he received blood transfusion and intravenous drips. He was bedridden; used a catheter to perform bodily functions; was unable to eat solid foods for a period; experienced breathing problems; expectorated blood in his urine and mucus; had an internal ruptured bleeding haemorrhoid causing him to bleed from his anus; developed bedsores and was unable to pass stools due to his initial inability to eat. Apart from intermittent pains in the chest and thigh, he made a full recovery.

10. The second case was ***Kenton Sylvester v AG***⁴ involving eight fractured ribs; a broken right humerus; broken left radius and ulna; trauma to the eye; loss of consciousness for an unspecified duration; contused liver; punctured lung; abrasions and soft tissue injuries to the face and chest. The plaintiff was awarded \$200,000.00 in general damages inclusive of aggravated damages, adjusted to December, 2010 as \$369,697.00.

11. The third case was ***Yudhistra Jadoo v Deewa Jagroop and ors***⁵ involving a closed head trauma, multiple fractures to both legs and both wrists,

³ *Nigel Mayers v The AG* CV2007-02297 delivered on 8th January, 2013

⁴ *Kenton Sylvester v AG and ors* HCA 4025 of 1992 delivered on 31st July 2002

⁵ *Yudhistra Jadoo v Deewa Jagroop and ors* CV2010-00606 delivered on 19th October, 2012.

broken upper and lower teeth with bleeding, mandibular fracture of the right parasymphysis and left condylar regions and a maxillary dento-alveolar fracture involving the upper incisors. He also suffered lung contusion with respiratory difficulties, facial lacerations, abrasions around the neck, and diffuse swelling of the left side of the face. He suffered extensive scarring to his chin, lip, chest, thigh, leg, and knee. That claimant's injuries resulted in debilitating physical disabilities including a right limb that was shorter than the left by 2cm; walking with a limp and angular deformities of both wrists. His movements in both wrists were limited and he experienced constant pain in his right hip and right knee and occasional pain in his right wrist. His facial scarring was permanent but capable of some improvement by corrective surgery. He was awarded \$263,500.00 in general damages, updated to \$310,000.00.

12. Having examined the three cases, the injuries of the claimant were as extensive and comparable to those matters. This court accepted that the instant matter involved multiple, serious injuries and, in making the award for compensation, the aim should be to arrive at a fair and adequate quantum. In all the circumstances of the present case, this court felt that the quantum sought by counsel for the claimant was reasonable, and within the range of the possible awards to be given for the multiple injuries that she had sustained. This court considered further that the purpose of this award was not to facilitate over-compensation but to compensate for an established loss. The claimant must be fairly recompensed for her pain and suffering, both physically and psychologically, which were continuing. Undoubtedly, her life was altered dramatically by this accident and this court considered that in the face of this one off award, it must aim for adequate compensation for her pain.

SPECIAL DAMAGES

Transportation

13. The claimant sought compensation for travelling of \$13,175.00. She gave evidence that she was on bed rest for at least one year after the accident, and it took her approximately two years to be able to move around unaided. She provided receipts evidencing sums spent and filed hearsay notices. Given her injuries, it was accepted that she would have needed to hire transportation to take her to her appointments. At least two of the receipts for \$200.00 each were undated, so disallowed. Two others for \$150.00 each were duplicated, reflecting the same dates and purposes of travel, so only one claim was allowed. She was allowed to recover \$11,900.00 for travelling expenses, as supported by receipts.

Domestic assistance

14. The claimant hired Ms Avaneil Harris to provide domestic assistance for three months after the accident, at \$1,500.00 per month. Ms Harris assisted her to get off the bed, to move about the house, to perform her personal hygiene, with washing, cooking and to attend her doctor's appointments. After Ms Harris had left, her family performed these tasks. She sought to recover \$4,500.00, which was reasonable and so allowed.

Medical expenses

15. There was a claim for medical expenses and continuing of \$7,670.90. Receipts supported the expenditure of \$9,170.90, which was allowed.

Police report

16. She claimed \$50.00 for a police report. She provided no documentary proof of this expenditure so it was not allowed.

Loss of earnings

17. The claimant pleaded that she was unable to work since the accident. She owned and operated a mini mart at her home for approximately five years prior to the accident. At the mini mart, she sold dried goods, soft drinks, haberdasheries, cooked meals and grocery items. She pleaded loss of earnings of \$2,000.00 per month from January, 2012 then, in evidence, asserted that her business was successful, and she had earned on average approximately \$10,500.00 per month. She provided a schedule prepared by her showing the expenses and earnings of her business. Based on this, she sought to recover \$94,500.00 from January 2012 to assessment at \$10,500.00 per month. She called no other evidence to corroborate this earning and provided no other documents or records. She could have called suppliers, customers and/or provided bank records, but failed to do so. She could have brought evidence of statutory payments but failed to do so. In fact, in her oral testimony, she admitted that she made no statutory payments. She also failed to satisfy this court as to the flow of customers or the regularity of their access to her mini mart or to call corroborating evidence of her purchases from suppliers of goods sold by her. In the face of a huge discrepancy between the amended pleaded monthly earnings and the evidence in support, this court was not prepared to make an award in the magnitude as outlined in her witness statement. Outside of this huge split in the pleaded case and evidence on loss of earnings, this claimant presented as not intent on hoodwinking the court with a manufactured case. Thus, it was accepted that she would have suffered some form of loss of earnings from the accident. There was no explanation provided for the divergence in dollar amounts between the pleaded case and evidence led. She could have brought independent

documentary evidence or at the very least, some form of corroboration of her claim. Thus, she failed to convince this court that she had earned steadily \$10,500.00 per month, rather than the \$2,000.00 per month as pleaded. She was bedridden for at least one year and achieved unaided ambulation after a two-year period. It was accepted that her injuries would have led to some form of loss of earnings but that she failed to prove the amount to the satisfaction of this court. It was reasonable to make a lump sum award of \$30,000.00.

FUTURE SURGERY

18. The claimant sought to recover compensation for future surgeries for her scarring to her forehead, chest, arm, leg, foot and heel. She relied on a medical report of Dr Fayard Mohammed dated May 03, 2012, which recommended surgical interventions in the sum of \$60,000.00. She would be allowed to recover this sum for two future surgeries.

ORDER

19. It is ordered that the first defendant do pay to the claimant:
 - i. General damages in the sum of \$250,000.00 with interest at the rate of 2.5% per annum from November 23, 2013 to May 03, 2019;
 - ii. Special damages in the sum of \$55,570.90 with interest at the rate of 2.5% per annum from January 15, 2012 to May 03, 2019;
 - iii. Future surgery in the sum of \$60,000.00; and
 - iv. Costs as assessed in the sum of \$62,473.85.A stay of execution of 28 days is placed on this order.

Martha Alexander

Master