

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO CV2016-00153

BETWEEN

CAMILLE DINDIAL

Claimant

AND

WINSTON BRIDGEMOHAN

Defendant

Before: Master Martha Alexander

Date of delivery: March 08, 2022

Appearances:

For the Claimant: Ms Sophia Vailloo

For the Defendant: Mr Toolsie Ramdin

DECISION

BACKGROUND

1. This claim relates to a fake dentist whose untrained hands did major damage to the claimant's mouth, leaving her in untold pain that has remained unresolved as at the date of the assessment. It arose when the defendant, who was not a registered dentist, unlawfully and fraudulently undertook a dental procedure on the claimant's mouth by negligently placing two crowns therein. It would appear that the defendant was

operating a dental clinic styled “W.B. Clinic” (“the dental clinic”) located upstairs Charran’s Plaza on the Chaguanas Main Road when the claimant sought out his services on December 07, 2011.

2. The provision of dental services by uncertified persons, such as the defendant, holding themselves out to be qualified dentists, is an emerging phenomenon locally in the dental field so the claimant would have unwittingly sought out his services. When on the said day, the claimant sought out the services of the defendant, she did so in the company of a relative who was also a “patient” of the dental clinic. At the dental clinic, the claimant enquired about the cost of two crowns. The defendant examined the claimant’s teeth and took full impressions for the fabrication of two crowns for her upper right molars. She then made a deposit of \$1500 towards the cost of the two crowns.
3. On January 20, 2012 the claimant attended the dental clinic to have the crowns cemented. The two crowns fabricated were joined together. To install the crowns, the defendant prepared the claimant’s two upper right molar teeth #2 and #3 by grinding them down. The defendant proceeded to fit the crowns onto the claimant’s teeth but they did not fit at first. He moved the crowns in and out of the claimant’s mouth at least five times in a bid to get them to fit. When this did not work, the defendant grinded the claimant’s opposing bottom tooth in order to fit the crowns on the upper #2 and #3 teeth. The procedure took approximately three hours and at the end of it, the claimant paid the balance of the cost for the crowns.
4. What followed the cementing procedure was a period of pain, suffering and untold agony with no relief being provided by the defendant. Her oral condition deteriorated and the defendant performed a “filing” procedure, done without anaesthetic, but which provided no relief to her pain. She later discovered from the Dental Council where she enquired about her recourse against the defendant that he was not a registered dentist and that they could not assist her. The claimant’s case was that she suffered injury and damage at

the unqualified hands of the defendant who simply had no idea about what he was doing. She filed this action and after a full trial obtained judgment on liability on February 20, 2019.

EVIDENCE

5. The claimant provided evidence in this matter and called an expert witness, Dr Kevin Moze. The claimant gave unchallenged evidence. The claimant's evidence was that following the initial crown fitting procedure, the claimant complained to the defendant that she was experiencing pain and discomfort. She could not get a proper bite and was getting pain and sensitivity in the area of the two crowns. The pain was affecting her concentration and focus at work; she could not talk properly or close her mouth properly. She also began to experience a bad taste and smell in her mouth, in the area where the two crowns were cemented. The claimant's gums were swollen and bleeding.
6. In February 2012, the pain was so severe that the claimant sought an appointment with the defendant. She eventually secured the appointment for February 13, 2012. On that day after the defendant examined her mouth, he told her that the area would heal in another week. The claimant continued experiencing pain so she sought another appointment with the defendant. What followed was the rescheduling of various appointments by the defendant over the period March 17, 2012 to April 16, 2012. Eventually, on April 16, 2012 the claimant secured an appointment and was seen by the defendant.
7. On April 16, 2012 the defendant advised the claimant that because of the severe pain, bad smell and bad taste that she was experiencing, she could only eat on the left side of her mouth. She gave evidence that she experienced grave embarrassment when talking to people, as she feared that they would smell the terrible odour coming from her mouth. She claimed that the defendant told her that the pain she was experiencing was

psychological; that the sensitivity could be from brushing her teeth and the bad smell could be from another tooth. The defendant treated her by filling the space between the teeth without administering any anaesthetic (topical or otherwise), which she stated was a painful procedure.

8. On May 04, 2012 the claimant visited Dulan's Family Dental Centre where she was informed that her gums were infected and that the crowns on teeth #2 and #3 should not be joined. At that point she was given antibiotics and a medicated mouth wash for the gums to heal first before further intervention. On May 09, 2012 she again visited Dulan's Family Dental Centre and whilst there the crowns fell out. The area was cleaned and a sedative filling was placed on the teeth. She was issued a sick leave certificate from Dulan's Family Dental Centre advising that urgent dental procedures were done to treat with pain and she required rest.
9. On October 11, 2012 the claimant visited Dulan's Family Dental Centre where tooth #2 was extracted. She continued seeking treatment from Dulan's Family Dental Centre and then from Dr Marcus Daniel who recommended the fabrication and installation of two crowns in the claimant's mouth.

EXPERT EVIDENCE OF DR KEVIN MOZE

10. Dr Kevin Moze is a dental and maxillofacial radiologist and dental implant surgeon with over twenty years' experience. He was granted permission to provide independent expert evidence to the court. Dr Moze provided a report dated June 06, 2017 detailing his findings, assessment and proposed restorative procedures. He subsequently provided an updated report dated May 07, 2019.
11. At the assessment, Dr Moze gave evidence that crowns should never be joined and that doing so was unacceptable dentistry. Further, he expressed the opinion that the work

done by the defendant in placing a crown over the UR6, which was previously root canal treated, impacted the external supporting apparatus of the UR6 tooth. The defendant's crowning of the UR6 tooth compromised the supporting structure of that tooth in a more advanced way. Dr Moze also indicated that if the claimant continued to be untreated with no rehabilitation, the sinus cavity would become pneumatized (i.e. having an air-filled cavity) and there will be a further decrease in usable bone. A further consequence would be supra-eruption of the lower teeth. This could lead to periodontal disease necessitating the eventual removal of the lower teeth, and eventually osteoarthritis and Temporomandibular Joint Syndrome (TMJ syndrome). Another consequence of not replacing the upper right UR6 and UR8 teeth would be that the claimant would not have the masticatory (i.e. the process by which food is crushed by the teeth) force of chewing.

12. Dr Moze opined that the best long-term solution to rehabilitate and give the claimant the function of her teeth would be bone grafting, extraction of the UR6 and UR8 and insertion of dental implants and related procedures. Dr Moze further identified that the claimant had chronic infection of the jawbone around the root of the tooth, which had gone untreated for a long period. He stated that given the chronic infection of the jawbone, she would have suffered more bone loss since she was seen by him on April 25, 2019. He recommended treatment with bio-material (i.e. synthetic bone or xenograft from animal species) and that the costs of the materials were increasing since June 2019. He also gave evidence of the decreasing useable volume of bone required for the purpose of placing implants. He gave detailed evidence of the bone graft procedure including about the scan required to determine the amount of useable bone at the time of the surgical intervention. He provided a full costing of all procedures.

13. Dr Moze gave evidence further that in the unlikely event that there was not enough useable bone, a sinus lift surgical procedure would be done under local anaesthetic where the bone is packed into the sinus cavity. The sinus lift procedure would cost \$15,000. He also stated that the bone which is to be placed in the sinus cavity requires a bone

harvesting procedure which would involve autogenous bone from the claimant at a ratio of 70% and 30% obtained from a cadaver or cow species. The cost of this procedure to harvest the claimant's bone would be \$30,000.

14. Dr Moze also gave evidence that he would need bone graft materials namely two cubic centimetres of bone to mix with autogenous bone. The cost of procuring these bio-materials (bone graft materials) has increased because of Covid and there was now difficulty being experienced in getting materials. He gave evidence that he might be able to procure cow bone locally in Trinidad at a cost of \$4000 or alternatively human bone from cadaver from Germany at a cost of US\$800. He estimated that the two cubic centimetres of bone material would cost approximately TT\$20,000. He stated further that the bone harvesting procedure would be accompanied by a platelet rich fibrin procedure (PRF) the purpose of which is to assist in bone growth and healing. The PRF procedure would cost \$2500.

15. Dr Moze also gave evidence that following extraction and bone grafting of the UR6 and UR8, the claimant would require prescription for antibiotics and analgesics and a nasal spray. He also detailed the medication regime requirement following each stage of the process including antibiotics and anti-inflammatory medication and provided an estimate for the medication. The total cost estimated for future treatment to rehabilitate the claimant was \$98,553.75. Dr Moze's fees to attend the trial on liability and the assessment were \$20,000.

16. Dr Moze explained that the claimant would have experienced severe pain when the defendant performed the procedure in January 2012. A dentist would have known that before crowning a root canal treated tooth, it must be asymptomatic. The assessment to determine this is done by taking radiographs of the tooth to ensure that there is no root canal failure, no mobility of the tooth and no infection. It is only upon the determination of these issues that a crowning of a tooth should be done. He concluded that it was clear

that the defendant did no such radiograph and/or assessment parameters prior to him crowning the claimant's tooth.

17. Dr Moze also gave evidence that he observed that the UR6 was extremely flat and did not have the minimal height preparation needed to retain the crown. He added that it would be inconceivable for the crown to be able to be retentive on the remaining tooth structure. The preparation of the UR6 by the defendant by grinding it down significantly to receive the crown would have led to infection of the periodontium and there would have been mobility of the crowns.

DISCUSSION

18. The claimant's evidence of pain, discomfort, swollen and bleeding gums following the crown procedure done by the defendant, which continued even after the extraction by Dr Dulan was supported fully by Dr Moze's evidence. It would appear that the teeth were over-prepared by the defendant resulting in infection of the claimant's gums causing pain and discomfort. In the view of the court, the defendant who was not a dentist would have lacked the requisite training, skill and experience to adequately investigate/examine, assess and treat the claimant. He would also have been unable to provide her with the minimum standard of care required from a dentist. Basically, he was clueless as to how to treat the claimant when she returned with complaints of unending pain and discomfort.

LAW

SPECIAL DAMAGES

19. The law on special damages is well-known and requires that a claimant pleads, particularizes and proves her claim. In the present matter, the claimant complied with

the requirements of pleadings and proof and she is allowed to recover special damages up to the date of trial in the sum of \$13,104.50. This award covers the claims for which proof was supplied:

i.	Cost of procedure and fabrication of 2 crowns by the defendant	= \$5000
ii.	Dental treatment at Dulan’s Dental Family Centre on May 09, 2012 (sedative filing)	= \$450
iii.	Medication (Flagyl) from Bhagan’s Drugs	= \$4.50
iv.	Dental treatment at Dulan’s Dental Family Centre on October 11, 2012 (extraction of tooth #2)	= \$450
v.	3D scans of teeth at Dulan’s Dental Family Centre on October 25, 2012	= \$900
vi.	Dental treatment & CT scan - Dental Solutions	= \$2700
vii.	First dental report by Dr Moze dated June 06, 2017	= \$2500
viii.	Examination and x-ray by Dr Moze	= \$1100
	TOTAL	= 13,104.50

GENERAL DAMAGES

20. To assess general damages, the applicable principles set out in *Cornilliac v St Louis*¹ would apply. These would include: (a) the nature and extent of the injuries sustained; (b) the nature and gravity of the resulting physical disability; (c) the pain and suffering which had to be endured; (d) the loss of amenities suffered; and (e) the extent to which the claimant’s pecuniary prospects have been materially affected. These limbs were been considered against the backdrop of the evidence presented above, which have satisfied them. The evidence of Dr Moze made clear what was the nature, extent and continuing disability of the injuries suffered as well as the pain endured. The evidence of the claimant was also accepted as to her pain and suffering.

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

21. The evidence in totality highlighted that the defendant significantly grinded down two of the claimant's teeth, causing her untold oral pain and suffering. She could not chew on the right side of her mouth; or focus at work. She suffered humiliation and embarrassment while talking to people because of the foul stench emanating from her mouth and the bad taste was uncomfortable. The claimant suffered the extraction of her tooth #2 and swollen and bleeding gums that took a long while to heal. The claimant's condition went untreated for over eight years. She suffered infection of the jawbone and significant bone loss. The claimant sought an uplift for aggravation given her resultant humiliation from her ordeal.

COMPARATORS

22. There was no case on par with the present one but counsel for the claimant recommended the following:

- i. ***Mc Namara and Stephen v Seymour 2nd Plaintiff***² in a judgment delivered on July 30, 1974 for serious damage to teeth the sum of \$3,000; as adjusted to December, 2010 to \$62,615.
- ii. ***Kerron Welcome v AG***³ where a claimant suffered broken teeth at the top, bottom and front of his mouth, requiring surgery, and an installation on the crown of one of his tooth had fallen out. He also suffered a cut to his lip; bruises on his nose, face, wrists, knees and legs. His chest and stomach were swollen and also bruised. He was awarded \$50,000 in general damages inclusive of aggravated and \$20,000 exemplary.
- iii. ***Lincoln Marshall v AG***⁴ where a claimant responded to a prison officer who had used obscene language at him, and was beaten by three officers. He suffered loss of two teeth and four were broken. He also sustained about his body welt marks, haematomas and swelling as well as swelling of the face and jaw, inability to eat food and difficulty talking. There was bleeding from the jaw area and soft tissue injury about the body. He was

² *Mc Namara & Stephen v Seymour 2nd Plaintiff* HCA 2036 of 1973

³ *Kerron Welcome v AG of T&T* CV2012-00144 delivered by Alexander M on May 12, 2014

⁴ *Lincoln Marshall v AG* CV2009-03274 delivered on October 01, 2010, by Rajnauth-Lee J

awarded \$100,000 in general damages, inclusive of aggravated, and \$50,000 as exemplary.

23. Based on the evidence and comparators, the court was minded to award \$100,000 inclusive of aggravated damages for the pain and suffering endured by the claimant. The judge in her liability order directed that interest rate of 6% is to be applied to the award of general damages. This court was bound in its award of interest by the judge's decision.

EXEMPLARY DAMAGES

24. Counsel for the claimant argued that an award for exemplary damages should be made to punish the defendant for his unlawful and fraudulent conduct. She argued that by granting such an award, the court would show its displeasure and make a firm statement for the protection of unsuspecting citizens from the hands of a "quack". She submitted also that it will deter other "quacks" from similar fraudulent conduct. She invited the court to make an award of \$30,000.

25. An award for exemplary damages, as guided by the criteria in *Rookes v Barnard*⁵, serves to punish a defendant for inexcusable, arbitrary and highhanded behaviour such as is motivated by bad faith. It would usually apply where the compensatory award is insufficient and to fill that loophole. I do not consider that an exemplary award would arise in the present matter, especially bearing in mind the need for moderation and restraint and taking account of the awards that I have already made by way of compensation, which included an element of aggravated damages. In the view of the court, this is not a suitable case for an exemplary award.

⁵ *Rookes v Barnard* [1964] AC 1129

DISPOSITION

26. It is ordered that the defendant do pay the claimant as follows:

- (i) General damages in the sum of \$100,000 inclusive of an uplift for aggravated damages, with interest at the rate of 6% per annum from January 27, 2016 to March 08, 2022.
- (j) Special damages in the sum of \$33,104.50 with interest at the rate of 1.25% per annum from January 20, 2012 to March 08, 2022.
- (k) Future surgery in the lump sum of \$98,553.75.
- (l) Doctor's fees in the sum of \$20,000.
- (ii) Costs prescribed in the sum of \$50,566.10.
- (iii) Stay of execution of 28 days.

Martha Alexander

Master of the High Court

MARTHA ALEXANDER
MASTER OF THE SUPREME COURT OF
TRINIDAD AND TOBAGO