

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2015-04057

BETWEEN

DOTSY WALKER

First-named Claimant

OMARI FLANDERS

(by his next friend **DOTSY WALKER**)

Second-named Claimant

AND

ASHTON WILLIAMS

Defendant

Before: Master Alexander

Appearances:

For the Claimants: **Ms Denyse Gouveia instructed by Ms Whitney Charles**
For the Defendant: **Mr Orrin Kerr**

DECISION

INTRODUCTION

1. On 12th June, 2013 the second-named claimant (“Omari”) was playing on the street in front of his home, in the residential area of Cane Farm, Trincity, when he was mauled by a large mixed-breed dog (“the said dog”). At the time of the attack, Omari was 9 years old, a minor who, in the midst of playing with other neighbourhood children, found himself the target of the said dog, which raced after and pounced on him, causing him to fall and hit his face against a wall. While Omari lay face down on the ground, the said dog ripped away his clothes and bit him several times about his body, specifically on his gluteal area (buttocks). Dotsy Walker (“Dotsy”) is the mother of Omari and was inside her home when she was alerted to the attack by loud cries and went to Omari’s assistance. She managed to get the said dog away from Omari, who then slipped into the front yard of his home. Then, as she turned to enter her gate, with her back to the said dog, she too was bitten on her buttocks before being pushed

to the ground. The said dog continued its attack, by biting her on the right side of her chest, just under her right breast, close to her ribs. She fought off the attack and ran through her gate but the said dog pursued her inside the yard and went after Omari, who sought unsuccessfully to escape into the house. Omari was cornered against a fence, as the said dog bore down on him, so Dotsy threw an object at it, causing it to race out of the gate into the street.

2. This is the assessment of the compensation payable to both Omari and Dotsy for the personal injuries sustained from the vicious attack by the defendant's animal. As judgment in default of defence was entered against the defendant on 10th May, 2016 and no notice of intention to be heard was filed, he had limited participatory rights at the assessment. I will now turn to the evidence, which albeit unchallenged, must convince this court as to the just compensatory package for the injuries sustained.

DISCUSSION

The evidence

3. The evidence in this matter came from Dotsy and Ms Sheila Duncan, a witness to the attack, who confirmed what transpired. Both Dotsy and Ms Duncan filed witness statements on 21st November, 2016, which described the traumatic and vicious nature of the attack. There were also several medical and dental reports provided, detailing their injuries and a treatment plan for Omari. As regards Dotsy, her medical report dated 21st January, 2014 from the Eric Williams Medical Sciences Complex ("EWMSC") was issued by Dr A Ramnarine, Registrar (Ag) and pointed to soft tissue injuries. With respect to Omari, a medical report dated 7th March, 2014 from the Eric Williams Medical Sciences Complex ("EWMSC") and issued by Dr Alex Udekwu noted that there were multiple lacerations on both gluteal areas and an avulsed upper incisor tooth. In a dental report dated 27th June, 2013 by Dr Farrah Mustapha, reference was made to Omari presenting with lacerations to the face, upper and lower lips and dental trauma (see below).

The law

4. As a rule, an assessing court sits to determine the damages to be awarded for the personal injuries suffered by Dotsy and Omari, based on the evidence presented. In this exercise, the court is guided by the principles set out in *Cornilliac v St Louis*¹ in making its award for damages. It also takes into account discernible trends locally or, alternatively, in Caribbean or other jurisdictions; any depreciation in the value of the Trinidad and Tobago dollar as well as other principles on assessment.

The nature and extent of the injuries and gravity of any resulting disability

- 4.1 The focus of the attack on Omari was on his buttocks. Consequently, he suffered multiple lacerations on both gluteal areas, with the longest laceration measuring 12 cm². He also suffered dental injuries, described as an avulsion to the upper left incisor tooth, tenderness to percussion of the upper right central incisor and a fracture to the lower left central incisor's edge. For his dental injuries, he required dental surgery which included a root canal, tooth restoration and tooth replacement. His dental surgeon, Dr Farrah Mustapha, in a report dated 27th June, 2013 outlined a continuing treatment plan inclusive of a root canal for the upper right central incisor; restoration for the lower left central incisor which had been fractured; and immediate replacement for the upper left central incisor, which had been displaced from its socket. It was recommended also that Omari be treated with a hybrid bridge from the upper right central incisor to the upper left incisor. In this dental report, it was stated that Omari is in need of an implant replacement, which includes a crown and bone grafting, but which cannot be done at this point since his bone and arch growth is not completed, given his age.
- 4.2 The nature and gravity of Omari's dental injuries and the resulting disability are reflected in the numerous dental reports of Dr Farrah Mustapha. Thus, dental reports dated 12th August and 21st September, 2016 pointed clearly to his dental treatment

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

² Dental report dated 27th June, 2013 by Dr Farrah Mustapha

being ongoing. It would appear also that Omari was found to be in need of specialised treatment, so was referred to a specialist in Orthodontics, Dr Sastri Harnarayan. In a report dated 20th October, 2016 Dr Sastri Harnarayan recommended a prosthetic replacement, alignment and retraction for “functional reasons”. This report recommends that this particular treatment be deferred until Omari attains the age of 18 or when he has completed his growth spurt, because of the permanency of such treatment.

4.2 As regards Dotsy, her injuries were mainly soft tissue such as abrasions to the right side of her chest with small puncture marks, mild swelling and tenderness. There was no evidence as to any continuing disability, so it was presumed that as at the date of the assessment her injuries were resolved.

The pain and suffering endured

4.3 The personal injuries suffered by both claimants in this matter sprung from a vicious attack by a large dog. It is accepted that the attack was traumatic and that both claimants suffered grave physical pain, distress and emotional turmoil. In the case of Dotsy, she had to endure watching the mauling of her son by the said dog before being forced to intervene and then having the animal turn its fury upon her, whereupon she was made to suffer physical violation of her person. Her pain and suffering, therefore, would have been both physical and emotional. In the case of Omari, he was only 9 years old when the said dog pounced on him and savagely ripped away at his buttocks. It is an attack that resulted in Omari being bitten multiple times in the most sensitive of areas. Such an attack would undoubtedly have emotionally scarred Omari. The psychological and emotional impact of this attack on Omari was recounted in the evidence of Dotsy who noted that during the entire ordeal Omari, “was crying and screaming. He continued screaming even after the dog was no longer in my yard. I was not able to calm him or console him.” She also gave evidence that following the ordeal, she observed a change in his temperament, as he became less outgoing and talkative. She also noted the onset of his fear of large dogs.

Loss of amenities

4.4 The evidence points to Omari having suffered a loss of amenity following the incident. It would appear that Omari, who was previously an adventurous, outgoing and carefree child, now restricted how far he would venture outside. He has since developed a fear of large dogs and of leaving the house and walking on the street. He has refused also to walk along streets where he was aware of large dogs living. Further, in evidence, is the embarrassment he felt upon the loss of his tooth and his attempts to block his mouth, to hide his missing tooth. On the other hand, there was no evidence proffered of any loss of amenity suffered by Dotsy.

Cases

5. Counsel for Dotsy and Omari invited this court to consider several cases, none of which reflected the exact injuries that presented in the one at bar. This court was mindful in the conduct of this exercise to bear in mind that Omari's injuries were both dental and to his gluteal area. It was considered that his dental injuries were serious as was the one to his buttocks, though healing of the latter occurred quicker. Further, Omari continues to suffer from the effects of his dental injuries and his treatment is ongoing. On the other hand, this court considered that Dotsy's bodily injuries were of a minor nature, being described as soft tissue and largely resolved as at the assessment date. As for the emotional and psychological injuries sustained by both Dotsy and Omari, such scars tend to be unseen, devastating and remain long after physical healing occurs. Kokaram J describes this phenomenon best when he accepted that a dog attack was such that would emotionally scar the human mind³. This court can only presume that the impact of such a vicious attack on the mind of a young child would be more devastating, especially as it unfolded outside his home and continued even after he entered the sanctuary of his own yard. It would also have been compounded when he was made to look on as the said dog turned its fury on his mother, viciously attacking her, before making another bid to attack him.

³

Diane Drayne Quamina v Anthony Cherry & another HCA S-556 of 1995 delivered on 21.07.06

5.1 The first case submitted by counsel was ***Mc Namara and Stephen v Seymour***⁴ where for serious damage to teeth, an award for general damages was made of \$2,500.00 (updated in 2010 to \$52,179.00). Another case referenced was ***Dennis Harrinanan v Vidya Pariag***⁵ where for serious facial injuries including the loss of five teeth, for which she had to be fitted with dentures, and damage to her left eye, a plaintiff was awarded \$65,000.00 which was upheld by the Court of Appeal; as updated to 2010 to \$137,196.00. The third case relied upon was that of ***Diane Drayne Quamina v Anthony Cherry and Jackie Quamina Cherry***⁶ where a plaintiff who was attacked by three dogs suffered multiple wounds for which she received stitches and was bed-ridden for three weeks. There was evidence that the wounds were multiple, but not deep, and that she had sustained abrasions from where she had fallen to the ground. There was also evidence of scarring on the plaintiff's legs, buttocks, back of both arms, back and front of neck and vulvae area, which had visibly been reduced. She experienced soreness between the legs where she was bitten and had difficulty urinating. The court in that case commented that the injuries were "comparatively speaking, not major injuries" and there was no evidence of permanent or partial physical disability and no continuing pain. There was, however, evidence of loss of amenity in that she developed a phobia of large dogs and was diagnosed with Post Traumatic Stress Disorder. In its judgment delivered in 2006, Kokaram J took into account the nature of the attack, the resulting injuries and impact on the plaintiff's personality, her mental anxieties at the sight of large roaming dogs, the level of embarrassment she felt from her minor scarring as well as past cases and awarded the sum of \$48,000.00.

5.2 A comparative analysis of the cases submitted with the one at bar will no doubt show that the injuries sustained by Omari were more extensive and serious than two of the cases above namely ***Mc Namara and Stephen (supra)*** and ***Diane Drayne Quamina (supra)*** so as to attract an award that would top those. In so doing, this

⁴ *Mc Namara and Stephen v Seymour* HCA 2036 of 1973 delivered on 30th July, 1974

⁵ *Dennis Harrinanan v Vidya Pariag* Civil Appeal No 239 of 1998 delivered on 2nd October, 2000

⁶ *Diane Drayne Quamina v Anthony Cherry and Jackie Quamina Cherry* HCA S-556 of 1995

court considered that Omari is to be justly and fairly compensated for his injuries, as this is not a roads to riches exercise. Bearing in mind all the usual principles on assessment, the nature of this attack, the resulting injuries and continuing impact on his life, it was considered reasonable to award general damages to Omari in the sum of \$70,000.00. With respect to Dotsy, who suffered minor soft tissue injuries, the case of ***Diane Drayne Quamina (supra)*** where the injuries were not major was a useful comparative yardstick. In that case, however, the plaintiff had received stitches for the several punctured wounds about the body, unlike in both cases at bar where stitches were not administered for the wounds. The plaintiff in ***Diane Drayne Quamina (supra)*** was also bed ridden for three weeks, unlike Dotsy who was given only one week's sick leave before returning to work. To my mind, Dotsy's injuries were of a far lesser degree of severity than those of the plaintiff in ***Diane Drayne Quamina (supra)*** which were expressed to be of a minor nature and her award is to reflect this. Dotsy is awarded the sum of \$25,000.00 for her pain and suffering.

SPECIAL DAMAGES

6. It is trite law that to obtain an award for special damages, the claimant must plead, particularize and prove his losses. Despite this oft repeated rule, many claimants still approach these courts without adherence to the requirements and ask that a realistic approach be taken in making the award. In the view of this court, where proof of losses is available, it should be provided to obtain compensation. This court also accepts that in its request for documentary proof of losses, the demand for stringent proof "must be tailored to the facts of each case." Further, in the absence of documents, attempts must be made to substantiate the claim or a claimant stands to have it rejected for lack of proof. This court will treat with each head of special damages sought to be recovered as follows:
 - (a) *Loss of earnings*
7. Loss of earnings did not form part of the pleaded case of Dotsy. In her evidence in chief, however, she averred that on the day of the attack she did not go to work but, after visiting the doctor, she dropped by the office to submit a sick leave certificate. At the material time,

Dotsy worked as a hospitality attendant with Servisair Trinidad and Tobago Limited, earning an average net salary of \$1,700.00 per fortnight. She averred that she was unable to work for a week and was not paid, as this was company policy. In support of this claim, she exhibited copies of two payslips for the months of April and May, 2013 and stated that she was unable to locate the payslip for June, 2013 when the incident occurred. Also exhibited was a copy of the sick leave certificate confirming that she was sent on one week's leave.

8. This court has several concerns with this claim, first of which is that it was not pleaded. The first indication of such a claim being raised came via the witness statement, which is an improper avenue for grounding this claim. This is a matter that was filed in 2015, some two years after the incident, so this is not a claim that Dotsy would have been incognizant of at the time of drafting her pleadings. Further, Dotsy gave evidence of a company policy of not paying its workers who have been sent on a week's sick leave but provided no evidence of this policy, either in written form or by calling her employer or even a co-worker to give evidence of this. This is not a case where there is no earning history or there is any challenge to the evidence as to earnings or where there is documentary thinness as to employment, it is simply an instance where there was a failure to plead this loss. This court finds it is absolutely unacceptable that a claimant would seek to make a claim for special damages belatedly via her evidence and not in her pleadings. Further, there was no amendment made to the pleaded case of Dotsy, by which she now must stand or fall. For this failure to plead this claim for loss of earnings, it is denied outright.

(b) Medical expenses

9. Medical expenses were pleaded and particularized as consisting of sums expended on dental treatment, medication, reports from dentists, a psychologist and other medical doctors. Receipts were provided in the sum of \$231.45 for Dotsy and \$14,869.75 for Omari and this claim is allowed as pleaded and proved.

(c) Transportation

10. Transportation cost of \$1,500.00 was pleaded and particularized as follows:

To and from hospital on the day of the accident	=	\$200.00
To and from Arouca Health Centre for six (6) days	=	\$300.00
To Dental Clinic (three visits)	=	\$450.00
To request and collect Medical Reports	=	\$400.00
To psychologist	=	\$150.00

In her evidence in chief, Dotsy gave details of the dates she attended on the dentist, the specialist orthodontist and psychologist with Omari. This is a legitimate claim for transportation costs via public transportation and the quantum was deemed reasonable. There was no documentary evidence provided to substantiate this claim but this court was minded to take a realistic approach and allow this claim in the sum of \$1,500.00.

(d) Clothing

11. It was pleaded that both Dotsy and Omari suffered the loss of the clothes they were wearing on the day of the attack. In the case of Dotsy, she claimed for a jersey that was destroyed in the attack in the sum of \$75.00 and Omari's clothes in the sum of \$300.00. This court considers it only reasonable, given the nature of the attack, that they be permitted to recoup the loss of the clothes destroyed, which is allowed in the sum of \$375.00.

FUTURE SURGERY

12. Future dental works for Omari was pleaded in the sum of \$15,000.00 and stated to be as at the time of filing the claim. The dental reports of both Dr Mustapha and Dr Harnarayan indicate the need for orthodontic treatment in order for a dental implant to be properly imposed to replace the tooth that was completely avulsed. Dr Harnarayan pins the current estimated cost of this surgery as \$32,700.00 plus orthodontic diagnostic records cost of \$1,800.00. He recommended that this treatment not be undertaken until Omari reaches 18 years. It was considered that this pending dental surgery is linked wholly to the attack and the entirety of the sum is recoverable. Future dental surgery is awarded in the sum of \$34,500.00.

ORDER

13. It is ordered that the defendant do pay the claimants (Dotsy and Omari) as follows:

To the first claimant (Dotsy)

- i. General damages for pain and suffering in the sum of **\$25,000.00** with interest at the rate of 2.5% per annum from 18th December, 2015 (date of service) to 8th March, 2017;
- ii. Special damages in the sum of **\$2,106.45** with interest at the rate of 2% per annum from 12th June, 2013 (date of incident) to 8th March, 2017;

To the second claimant (Omari)

- i. General damages for pain and suffering and loss of amenities in the sum of **\$70,000.00** with interest at the rate of 2.5% per annum from 18th December, 2015 (date of service) to 8th March, 2017;
- ii. Special damages in the sum of **\$14,869.75** with interest at the rate of 2% per annum from 12th June, 2013 (date of incident) to 8th March, 2017;
- iii. Future surgery in the sum of **\$34,500.00**.

All sums above awarded to the second claimant to be invested into the second scheme of the Unit Trust Corporation to be held on trust by the Registrar of the Supreme Court until he reaches the age of 18 years at which point he will be entitled to apply for a payment out;

14. It is ordered also that the defendant do pay the claimants' costs as assessed in the sum of **\$18,957.61** and that there be a stay of execution of 42 days.

Dated 8th March, 2017

Martha Alexander

Master