LAW LIBRARY
Sub-Registry
San Fernando

HC 1029/2000 : Rattan v Carlisle Tire & Rubber (Free Zone) Ltd

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A No. 1029 of 2000

BETWEEN

Mark Rattan — **Plaintiff**

AND

Carlisle Tire and Rubber (Free Zone) Limited — **Defendant**

BEFORE MASTER P. SOBION

Mr. E. Prescott instructed by Mr. H. Samuel for the Plaintiff
Mr. N. Bisnath instructed by Ms. A. Bissessar for the Defendant

JUDGMENT

This assessment of damages arises out of injuries sustained on May 11, 1999 by Mark Rattan (the plaintiff) at his place of work through the negligence and/or breach of statutory duty of his employer, Carlisle Tire and Rubber (Free Zone) Limited (the defendant). The plaintiff was employed by the defendant as a machine operator. He was injured when his left hand became trapped in the machine he was operating. His hand remained in the machine for some fifteen minutes during which time he experienced extreme pain and suffered a deep abrasion to the fingertips and a heating burn injury. The plaintiff underwent treatment for his injuries at the end of which he had lost the distal two digits of all the fingers on his left hand. He was also treated for post-traumatic stress syndrome.

The plaintiff resumed work at the defendant's organization on October 18, 1999. However, his employment was eventually terminated on October 1, 2000 on the ground of medical unfitness. He received Workmen's Compensation and insurance disability payments in the sums of $34,710.08 and $12,200.00 respectively.

At the hearing of this assessment, special damages were agreed in the sum of $10,235.35. This court therefore has only to determine what general damages should be awarded to the plaintiff for the injuries sustained.

The evidence at the assessment consisted of the viva voce evidence of the plaintiff and of Dr. Ramthahal who treated the plaintiff for post-traumatic stress syndrome. Three documents (including a report dated November 30, 1999 by Dr. Blackburn, who treated the plaintiff's physical injuries) were put into evidence by consent. The defendant did not lead any evidence at the assessment. Both parties agreed that the plaintiff has suffered permanent partial disability of 35% based on his physical injuries only and 40% based on his psychological injuries.

Wooding C.J. in Cornilliac v St Louis (1965) 7 WIR 491 summarised the considerations that should be borne in mind in assessing general damages as follows: (1) the nature and extent of the injuries sustained (2) the nature and gravity of the resulting disability (3) the pain and suffering which had to be endured (4) the loss of amenities and (5) the extent to which pecuniary prospects have been affected. I propose to examine the relevant facts under each head.

(1) The nature and extent of the injuries sustained

When the plaintiff's hand was freed from the machine, the tips of his fingers were crushed and bleeding, the flesh was charred and there were lacerations on the palm of his hand. The plaintiff was given emergency treatment at the nearby Point Fortin Area Hospital after which he was taken to the Victoria Nursing Home. Six days later he underwent the first of several operations, four of which

were done under general anaesthetic. These operations involved the removal of burn tissue, amputation two distal digits on each of four fingers of his left hand, skin grafts and the temporary attachment of his left hand to his groin. The last of these operations took place on July 21, 1999.

Apart from his physical injuries, the plaintiff also suffered from post-traumatic stress disorder. Some of the symptoms experienced by the plaintiff were insomnia, irritability, distressing flashbacks, anxiety, forgetfulness and lack of concentration. Dr. Ramthahal treated the plaintiff for this illness during the period November 11, 1999 to January 2001. The treatment consisted of pharmaco-therapy and psycho-therapy i.e. treatment by use of drugs and talk.

(2) The nature and gravity of the resulting disability

The plaintiff has lost the distal two digits of four fingers in his left hand. His thumb is intact. He is right-handed. He demonstrated to the court the difficulty he faced in using his left hand by holding a book between his thumb and index finger and releasing it after a short time. He explained that he was unable to use his left hand much because the fingertips hurt. It was agreed that the plaintiff has, as a result of his physical injuries, a permanent partial disability of 35%.

With respect to the plaintiff's psychological disorder, Dr. Ramthahal testified that the plaintiff had responded well to the treatment he received, but the symptoms were never fully controlled. He said that the plaintiff had withdrawn from treatment before it was completed. He considered that without the treatment, one could expect a relapse or recurrence of symptoms. It was agreed between the parties that the plaintiff has a permanent partial psychological disability of 40%.

(3) The pain and suffering which had to be endured

The plaintiff experienced severe pain at the time of the accident. He felt weak and was in shock at the sight of his charred, bleeding hand. His treatment at the Victoria Nursing Home lasted about three months and included four operations under general anaesthetic. He lost two distal digits on four fingers of his left hand. One of the operations was a skin graft procedure, which involved the attachment of his hand to his groin. This attachment remained for about one month and was the source of much discomfort and pain. Throughout his treatment, the plaintiff suffered severe pain. He continued to experience severe pain until sometime in 2000. At the time of the assessment, the plaintiff said he still sometimes experiences a stinging sensation around the stumps of his fingers and around the skin graft, especially in the area of the index and middle fingers.

Apart from physical pain, the plaintiff suffered psychological problems leading to a diagnosis of post-traumatic stress disorder. He also exhibited symptoms of depression. The plaintiff testified that he had strong reactions (akin to physical pain) when he was around machinery.

(4) The loss of amenities

The plaintiff was just 28 years old when the accident happened. Prior to the accident, he had an active social life. He played football for three different teams. He played cricket as a batsman and fielder. He also played table tennis. Since the accident, he tried to play football only once and he fell on his hand resulting in much pain. He is unable to hold a bat to play cricket but he is still able to play table tennis for recreation.

The plaintiff says he can no longer eat with a knife and fork. He needs assistance to do tasks such as buttoning up shirts and cuffs. He is also unable to perform domestic chores such as ironing, sweeping or washing dishes.

(5) The extent to which pecuniary prospects have been affected

At the time of the accident, the plaintiff worked for the defendant as a machine operator. The parties agreed that the plaintiff's annual salary in that job was $31,387.00. When the plaintiff returned to work some five months after the accident, he was assigned different duties. He worked in a lab taking reports and recording information in files. In a letter dated July 13, 2000, Dr. Ramthahal informed the defendant's Human Resource Manager that the plaintiff suffered from post-traumatic stress disorder. He advised that the plaintiff's job environment was counterproductive to his successful recovery and he was unfit for duty in the defendant's organization. The plaintiff remained on sick leave until October 2000 when he was sent home permanently by the defendant on the ground of medical unfitness.

Before the accident, the plaintiff was pursuing a course leading to the London City and Guild's Mechanical Engineering Technician's Diploma. He was in the final year of that course but he did not continue his studies after the accident because he felt he would be unable to function as a mechanical engineering technician with his injuries. He testified that the successful completion of that course would have enabled him to work at the technician level in any industry.

At the time of the hearing of the assessment, the plaintiff was engaged in a one-year programme leading to a Certificate in Environmental Science at the Professional Institute of Marketing and Business at Valsayn. On completion, he will have a basic knowledge of environmental science.

Bearing in mind the facts set out above under the various heads of general damages, I have now to consider what quantum of general damages is appropriate for the plaintiff. In this regard, I will make a separate award for loss of pecuniary prospects using the multiplier/multiplicand approach. Another award for general damages under the remaining heads will be made taking into account the injuries

suffered by the plaintiff and trends established in earlier cases of a similar nature in this jurisdiction.

With respect to loss of pecuniary prospects, the evidence is that the plaintiff earned $31,387.00 at the time of the accident. Because of his injuries, the plaintiff is not able to work as a machine operator or as an engineering technician for which he was being trained. He cannot work in any environment in which there is machinery. The plaintiff lost his job at the defendant's organization and must therefore re-enter the job market with a serious handicap, to wit, he has lost the use of his left hand and he has a psychological disorder.

It appears that the plaintiff was able to do the clerical work to which he was assigned after the accident but he could not work in that particular environment. It is noted that he has already taken steps to retrain himself by undertaking a course in environmental science, albeit at a basic level. This demonstrates that the plaintiff is making an effort to live with his disability and it augurs well for his future. However, it is evident that the plaintiff will have to overcome significant hurdles in order to obtain and keep a job in a new field.

Given the medical assessments of 35% permanent physical disability and 40% permanent psychological disability, I am of the opinion that the defendant will suffer a substantial reduction in income. However, no evidence was available as to what salary the plaintiff would be actually capable of earning in a new position. Based on the medical and other evidence before me, I estimate that the plaintiff will suffer a reduction of 40% of his previous annual salary of $31,387.00. The multiplicand will therefore be $12,554.80. I consider a multiplier of 14 to be appropriate having regard to the age of the plaintiff and the length of service he has before retirement, some 29 years. I therefore assess the plaintiff's loss of prospective income at $175,767.20.

Turning now to the general damages under the remaining heads, I considered the following authorities cited by the parties.

(1) Paragg v Bharath and Sankar HCA 1013 of 1970

The plaintiff, aged 28, suffered fractures of the right radius, ulna, and humerus, lacerations of right hand and chest, and severe soft tissue injury. He was unable to work for 2 years. His main residual disability was his inability to raise arm above his head or touch his shoulder using the arm. He was unable to lift all but small things. His leg was susceptible to cramps and pain. General damages were assessed at $12,000 in 1979. Updated to $141,000.

(2) Parejo v Clarke HCA 261 of 1982

The plaintiff, aged 31, was injured in an accident. She lost consciousness briefly and suffered amnesia for several days. She sustained fracture of pelvis, loss of a tooth, head injury. She was discharged from hospital after 2 months. She had to use crutches. The pain in the back was still experienced after 17 months. Her orthopedic injuries were assessed by two doctors at 34% and 60% permanent partial disability.

Apart from physical injury, the plaintiff also developed depression, no menstruation and secondary loss of sexual urge. She was still depressed after a year of therapy. She cried frequently and experienced hallucinations. She was diagnosed with depression and personality change. She was assessed by a psychiatrist with 25% permanent partial disability.

General damages were assessed in 1984 at $136,500 for loss of pecuniary prospects and $50,000 for general damages.

(3) Lied v Cannings Industries Ltd HCA 74 of 1972

The plaintiff, aged 33, sustained a 1" wound on the underside of the right wrist partially damaging a tendon and implicating a nerve. This caused numbness of the finger tips, weakness of the hand and continuous pain in the wrist and hand. The wound was sutured then re-opened to remove fibrous scar tissue relieving pain. The plaintiff remained unable to use his hand and fingers properly. The weakness of grip and stiffness was expected to continue preventing continued work as stevedore but not disabling him from most other forms of work.

In 1973, the plaintiff was awarded the sum of $7,000 for loss of prospective earnings and $3,000 under the other heads of general damages. The sum of $786 representing Workmen's Compensation received was deducted from the general damages.

(4) Dookie v Bharath HCA 390 of 1991

On December 22, 1989, the plaintiff, aged 62, sustained injuries to the head, neck, chest and left arm. He lost consciousness. His arm was placed in a cast and a procedure under anesthetic was performed after 1 week and a new cast put on. The cast remained for 3 to 3 ½ months. He suffered pain and had to undergo therapy. The plaintiff was a taxi driver and tailor. He returned to work in April 1990 but was unable to do physical work. He was given a desk job performing general duties until he retired in 1994.

The court awarded $40,000 as general damages. Updated to $44,422.

(5) Telemaque v Cazoe HCA 2770 of 1980

On April 17, 1979, the plaintiff was injured in a fracas. He underwent two operations on his right hand. He is right handed. He attended clinic as an outpatient for 18 months. His right hand was placed in a cast, supported by a sling. His occupation was buying and selling fish. After incident he was unable to ply his trade due to the injuries. At the assessment hearing, the plaintiff still could not use his right hand properly, his right hand could not touch his left elbow, the last 2 fingers of the right hand were bent, he could not move his thumb properly, he could not hold anything in right hand for any length of time. His permanent partial disability was assessed at 15%.

General damages were awarded in the sum of $30,000. Updated to $47,775.

Taking into account the differences in the injuries sustained by this plaintiff, the age of some of the authorities cited and the need to make appropriate adjustments for fall in the value of money, I consider that the sum of $90,000.00 to be an appropriate quantum of compensation for this plaintiff.

The sum of $46,910.08 received by the plaintiff as Workmen's Compensation and disability insurance payments falls to be deducted from the sum of $90,000 leaving a net sum of $43,089.92.

Accordingly I make the following order:

1. By consent, special damages are assessed in the sum of $10,235.35 with interest thereon at the rate of 6% per annum from May 11, 1999 to today.

2. General damages (exclusive of loss of pecuniary prospects) are assessed in the sum of $43,089.92 with interest thereon at the rate of 12% per annum from May 2, 2000 to today.

3. Loss of pecuniary prospects are assessed in the sum of $175,767.20 with no interest thereon.

4. The defendant will pay the plaintiff's costs of the assessment certified fit for advocate attorney.

Dated this 3rd day of June, 2003

Patricia Sobion
Master