

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW & EQUITY DIVISION

2014/CLE/gen/01909

BETWEEN

ELEANOR DIANE CROSSGILL

Plaintiff

AND

THE MINISTRY OF HEALTH

First Defendant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Second Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Van Gaitor with LaShay Thompson for the Plaintiff

Kirkland Mackey with Kenny Thompson for the Defendants

**6 and 22 November 2017, 18 December 2018, 30 July 2019 and
29 January 2020**

JUDGMENT

WINDER, J

This is an assessment of damages with respect to a claim for personal injury arising from an incident which took place at the plaintiff's workplace on 22 November 2013. When the matter came on for hearing on 25 May 2017, the defendants, through their counsel, admitted liability for the incident as alleged in the Statement of Claim.

1. At the assessment, the plaintiff gave evidence on her behalf and called Dr. Yvette Carter and Dr. Magnus Ekedede as witnesses in her case. The Defendants called Nurse Iris Fernander, Dr. Marjorie Aquino-Ageeb and Dr. Valentine Grimes as witnesses in their case.
2. The plaintiff, a registered nurse, suffered an injury to her back when she fell off a chair at her workplace on 22 November 2013. She was hospitalized, at Doctors Hospital, from 22 November, 2013 to 27 November, 2013. She was examined and treated by Dr. Magnus Ekedede, Consultant and Head of Neurosurgery at Doctors Hospital. A decompressive laminectomy-foraminotomy and discectomy surgery was performed on the plaintiff on 25th November, 2013. The report of Dr. Ekedede, with respect to Mrs. Crossgill, stated:

“On examination, she had bilateral severe lumbosciatica with SLE at 30° bilaterally with intense paresthesia (tingling, numbness, cramps) running down her lower extremity. She could not stand erect nor ambulate. She was on a stretcher and then transferred to the bed. She has a decreased lower spine range of movement with vertebra tenderness of 10/10 around L5. She also had neck stiffness.

An MRI of her lumbar spine, which was done at Doctors Hospital, confirmed an L5-S1 and L4-L5 disc herniation with nerve roots compression and spondylosis.

Mrs. Crossgill underwent a Decompressive Laminectomy-Foraminotomy and Discectomy at L4-L5 and L5S1 on the 25th November, 2013 and was aware that this was not going to cure her syndrome (lower back syndrome) but will help alleviate her symptoms. She also received about twenty-four (24) sessions of physiotherapy postoperative with application of back brace (LSO).

Ms. Crossgill has tremendously improved and is now ambulating but as I predicted, some of her symptoms like back stiffness, hip pain (occasional) and some parathesia (occasional) have persisted.

If she returns to work, she must refrain from lifting heavy objects, overreaching, bending excessively and other vigorous activities including contact sports.

I also have advised that she must receive physiotherapy at least sixteen (16) sessions once a year for the next three (3) years. She must also do her follow-ups regularly (three (3) months, six (6) months, one (1) year, one and a half (1½) years, two (2) years and three (3) years). [My Emphasis]

Therefore when/if she returns to work, she should be placed on light duty status for at least one (1) years.”

3. The plaintiff had to relocate from Long Island to New Providence. On 5 August, 2014, returned to work and was given a job description with lighter duties. However, on 21 August, 2014, she had to request an extended medical leave as she continued to suffer pain from her injuries. She also continued with physiotherapy sessions for ongoing treatment.
4. The plaintiff was only able to return to work on 22 November, 2014, for half days, on Dr. Ekedede’s recommendation. In accordance with the recommendation, she was assigned a desk job which she continues to perform to this day. She can no longer perform the job of nursing and midwifery, for which she was specially trained, as this requires lifting and repositioning of her body. She began working full days on 1 February, 2016.
5. The plaintiff qualified as a Registered Nurse after undergoing training here in Nassau from 1973 – 1976. She became a certified Midwife after undergoing training in England at Linconshire County Hospital from January, 1978 to the end of October, 1979. Her career as a qualified nurse spans 40 years and she may never be able to return to resume the kind of work for which she was trained.
6. The plaintiff has worn a back brace prescribed by Dr. Ekedede since her discharge from hospital on 27th November, 2013 but currently wears it less frequently than the period immediately following her discharge. The plaintiff complains that the accident has brought about hardships as well as emotional, physical and financial anxieties.
7. The Statement of Claim, in so far as is material, sets out the claim of the plaintiff as follows:-

**PARTICULARS OF NEGLIGENCE AND BREACH
OF STATUTORY DUTY**

- (1) Failing to provide a sturdy chair or otherwise safe apparatus for sitting purposes;
- (2) Failing to keep the premises of the health Centre free from the danger of unsafe furniture;
- (3) Failing to remove from the premises furniture that was unsafe, unsuitable and unlikely to cause injury during the course of usage for which it was intended;
- (4) Failing to warn staff of the probable risks and consequences of sitting on plastic furniture in the office;
- (5) Failing to outfit its premises with furniture suitable for staff charged with the responsibility of delivering health services to the public;

- (6) Failing, so far as is reasonably practical, to provide sturdier furniture for sitting in order for the Plaintiff to carry out her administrative functions;
- (7) Failing, so far as is reasonably practical, to provide furniture that did not pose a risk to the health and safety at work of the Plaintiff.

PARTICULARS OF INJURY

1. The Plaintiff who was born on 10th February, 1956 and was 58 years old at the time she suffered the following injuries:
 - a. Bilateral severe lumbosciatica with SLE at 30 degrees bilaterally with intense paraesthesia running down the lower extremity;
 - b. Decreased lower spine range of movement with vertebrae tenderness of 10/10 around L5;
 - c. L5-S1 and L4-L5 disc herniation with nerve roots compression and spondylosis; and
 - d. Serious emotional, psychological and physiological distress.
7. By reason of the negligence and breach of statutory duty of the Defendants the Plaintiff has suffered injuries, loss and damage.

AND THE PLAINTIFF claims:-

1. Damages for pain, suffering and loss of amenities;
 2. Interest as follows: (1) at the rate of 8 percent from the date of service of the Writ of Summons to the date of judgment; and (2) from the date of judgment until payment at the prime rate of the Central Bank of the Bahamas plus 2 percent pursuant to the Civil Procedure (Rate of Interest) Rules 2008 of the Supreme Court of the Bahamas; and
 3. Further or other relief; and
 4. Costs.
8. The Defendant's case centered around arguing that the plaintiff's injury was not that severe, that she had a pre-existing injury, that her symptoms occurred as a result of degenerative changes and that the procedure performed by Dr Ekedede could not resolve the plaintiff's issues.
 9. The defendants rely on the finding of Dr. Aquino-Ageeb, the radiologist who conducted the MRI shortly after the incident. Her evidence showed that damage to the spine which was reflective of degenerative changes. She indicated that in her opinion the patient's injuries were chronic and was as a result of aging and not acute. Dr. Valentine S. Grimes, Orthopedic & Spine Surgeon, gave evidence that he had reviewed the notes of Dr. Aquino-Ageeb and that he agreed with the analysis of the Plaintiff's injury. Dr. Grimes confirmed that the Plaintiff had some degenerative changes along the spine and anterior listhesis at L4/5 (malignment). He stated that in his professional opinion that the decompressive laminectomy procedure conducted by Dr. Ekedede was not the appropriate procedure to have been performed on the plaintiff. He stated that the decompressive laminectomy has a significant chance to further destabilize the spinal column.

10. In assessing the evidence I accepted the evidence of Dr Grimes and Dr Acquino Ageeb that the plaintiff was impacted by degenerative changes in her spine. I did not however accept the defendants' claim that the plaintiff suffered previously from any of the effects of these degenerative changes to her spine. I did not accept the allegations alleging that she had been placed on restrictive duties prior to the incident. In my view these did not come up to proof.
11. I also accepted Dr Grimes' expert evidence that the injury to the plaintiff could not have been resolved by the decompressive laminectomy performed by Dr. Ekedede. I also accept however, that the pain and symptoms she experienced was exacerbated by or brought on by the incident of 22 November 2013. This was confirmed by Dr Ekedede in his evidence, which I accept.
12. The claim of the plaintiff is limited to general damages for pain and suffering and loss of amenities. No evidence was advanced or submissions made with respect to any future surgeries. No evidence other than the plaintiff's oral evidence as to financial or emotional anxiety was provided. The plaintiff has remained employed by the defendant and there is also no claim with respect to loss of income or future loss of income. In fact, the plaintiff, now aged 63 is approaching the retirement age.
13. The parties rely on the *Judicial College Guidelines For The Assessment of General Damages In Personal Injury Cases*. The twelfth edition provides, in relation to back injuries, as follows:
- BACK INJURIES
- (a) Severe
- (i.) ...
- (ii.) Cases which have special features taking them outside any lower bracket applicable to the orthopedic injury to the back. Such features include nerve root damage with associated loss of sensation, impaired mobility, impaired bladder and bowel function, sexual difficulties and unsightly scarring.
- (iii.) Cases of disc lesions or fractures of disc or of vertebral bodies or soft tissue injuries leading to chronic conditions where, despite treatment (usually involving surgery), there remain disabilities such as continuing severe pain and discomfort, impaired agility, impaired sexual function, depression, personality change, alcoholism, unemployability and the risk of arthritis.
- (b) Moderate
- (i.) Cases where any residual disability is of less severity than that in (a) (iii) above. The bracket contains a wide variety of injuries. Examples are a case of a compression/crush fracture of the lumbar vertebrae where there is a substantial risk of osteoarthritis and

constant pain and discomfort; that of a traumatic spondylolisthesis with continuous pain and a probability that spinal fusion will be necessary; a prolapsed intervertebral disc requiring surgery or damage to an intervertebral disc with nerve root irritation and reduced mobility.

- (ii.) Many frequently encountered injuries to the back such as disturbance of ligaments and muscles giving rise to backache, soft tissue injuries resulting in exacerbation of an existing back condition or prolapsed discs necessitating laminectomy or resulting in repeated relapses. The precise figure depends upon the severity of the original injury and/or whether there is some permanent or chronic disability. £7,125 to £16,300
- (iii.) ...

14. The plaintiff argues that the injury fall to be considered in category of Severe (a)(iii) whilst the defendant argues it falls to be considered in the category of Moderate (b)(ii). It is my considered view that this case falls to be determined at the higher end of moderate (b)(i). These cases are described as:

Cases where any residual disability is of less severity than that in (a) (iii) above. The bracket contains a wide variety contains a wide variety of injuries. Examples are a case of a compression/crush fracture of the lumbar vertebrae where there is a substantial risk of osteoarthritis and constant pain and discomfort; that of a traumatic spondylolisthesis with continuous pain and a probability that spinal fusion will be necessary; a prolapsed intervertebral disc requiring surgery or damage to an intervertebral disc with nerve root irritation and reduced mobility.

The range provided for this category is £22,440 - £31,350. I would accept the appropriate sum is £31,350. I find that the appropriate award for pain and suffering is the amount of £31,350 or \$40,755.

15. In all the circumstance therefore I award the plaintiff the sum of \$40,755. The award to attract interest at a rate of 4% from the date of the filing of the Statement of Claim to the date of this judgment and to accrue thereafter at the statutory rate. The plaintiff shall have her costs to be taxed if not agreed.

Dated this 29th day of January 2020.


Ian R. Winder

Justice