

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMERCIAL DIVISION

No. 2010/COM/lab/00045

BETWEEN

DEANN LAMBERT

Plaintiff

AND

MINISTRY OF PUBLIC WORKS AND TRANSPORT

1st Defendant

AND

THE MINISTER OF PUBLIC WORKS AND TRANSPORT

2nd Defendant

Before: Deputy Registrar (Acting) Carol D Misiewicz

Appearances: Yolanda Rolle for the Plaintiff
Darcel Smith- Williamson for the Defendants

Hearing Date: 12 September, 2017

RULING

1. This is the assessment of the damages awarded to the Plaintiff by the Judgment of Senior Justice Stephen Isaacs on 15th March, 2016 on her claim instituted by Writ of Summons filed 27 May 2010. The learned judge found that the Defendants did in fact breach their duty of care to the Plaintiff, assessed the Plaintiff's contributory negligence at 15%, and found the Defendants liable for 85% of the damages to be awarded by assessment in default of agreement for same, and liability for costs was likewise determined at 85% to the Plaintiff, to be taxed if not agreed.
2. The Plaintiff gave evidence on her own behalf, and no other witnesses were called, for either side. Other evidence was tendered by way of the Plaintiff's Bundle of Documents, filed on 12 September 2017.

INJURIES, PAIN AND SUFFERING

3. Regarding the injuries, loss and damage suffered by the Plaintiff I find as follows.

The Plaintiff was employed by the Ministry of Transport in the Road Traffic Department at the material time (and continues to be so employed). On the day in question, 3rd May 2010 the Plaintiff, being then about 7 months pregnant, was attempting to leave her station to run after a customer who had mistakenly left documents at her window. As she got up to leave her feet became entangled in a bundle of electrical cords on the ground of her work station and she fell, landing on her knee because she did not want to fall on her stomach and hurt the baby.

4. She was taken to the Princess Margaret Hospital via ambulance, where she remained for the entire day – morning to evening, but not overnight. It was apparently determined that the baby in her womb was alright, and she was sent home to rest. However, in the days following she was experiencing shortness of breath, and consulted Dr. Cyprian Strachan at Javon Medical Center. The Plaintiff was given medication to stop the contractions she was experiencing but did not know the name of the medication. However, she did receive either Tylenol or Panadol for pain. Due to the problem of continuing shortness of breath and vomiting the Plaintiff spent three weeks in hospital, and was discharged two days after delivering her baby on 10 June, 2010.

5. Additional evidence of the Plaintiff's pain, suffering and loss is located in the medical report of Dr. Cyprian Strachan dated 25 January 2011. His report is in the form of a letter, which for convenience I set out in full, below:

“January 25th, 2011

To Whom It May Concern:

RE: Deann Lambert

D.O.B. 2.7.1974

Dear Sir/Madam,

The above named patient presented on the 10th May 2010 with pains to her lower back and knees, after slipping and falling whilst at her place of employment.

Mrs. Lambert who was noted to be approximately seven (7) months pregnant at the time commenced with cramps to her abdomen and contractions of her uterus.

Mrs. Lambert was diagnosed with premature labour, as well as muscle spasm and soft tissue injury to her knees.

Mrs. Lambert was placed on bed rest, analgesics and medicine to stop contractions and to prevent premature delivery of her pregnancy.

Thanks for your assistance.

Please contact the office for any further information.

Sincerely,

(Signature)

Cyprian Strachan, B.Sc. M.D”

6. Thus, the medical diagnosis was premature labour, muscle spasm and soft tissue injury to her knees.
7. Counsel for the Defendants submitted in paragraph 54 of her Supplemental Skeleton Submissions that the Plaintiff's assertion that she experienced contractions and premature labour was unproven and unsupported by evidence, because the doctor was not called to testify. This submission is rejected. The report from Dr. Strachan coupled with the Plaintiff's own evidence is sufficient. I found the Plaintiff to be a credible witness

who neither sought to exaggerate nor embellish her story. Further, it is apparent that the preventative measures of bed-rest and hospitalization were necessary and successful to avoid premature delivery. The results of this course of treatment are compelling, as counsel's own submissions in paragraph 57 of her Supplemental Submissions attests:

"57. Most telling is that at the time of the fall on May 3rd the Plaintiff was almost 8 months as cited on PMH certificate at her first visit and she went on to give birth in June which took her 9 months. The Plaintiff not only carried full term but gave evidence at trial that the baby was born normal and healthy."

8. The Plaintiff was 36 years of age at the date of the assessment.
9. It seems that the Plaintiff has fully recovered from this incident, because firstly, she still continues to be employed at Road Traffic, and secondly when her counsel asked her if she was still seeing the doctor, she answered that she was no longer seeing Dr. Strachan for her knee, but she has a problem with her legs for which she is consulting a Dr. Farquharson at Princess Margaret Hospital. The Plaintiff could not say whether the problem with her legs related to this accident, although she admitted that the problem arose afterward. Since there is no evidence that the leg problem which she described as 'veinous insufficiency' was related to the trip and fall at Road Traffic - and it was not argued by her counsel that it was, I will not take it into account in assessing the Plaintiff's damages for this action.

QUANTUM OF GENERAL DAMAGES

10. Mrs. Lambert's counsel submitted a bundle with three authorities which she commended for the court's consideration on a quantum for her general damages. These were three cases on knee injuries in her Bundle of Authorities, taken from Kemp & Kemp's December 2004 issue.
11. In *Evans v Hafeez para.16-022* the trial date was January 1998. There the plaintiff's most significant injury was "left knee injury exacerbating pre-existing but asymptomatic degenerative condition by 5-10 years." Duration and prognosis was for continuing knee pain, swelling and instability. The award of £7,500 in 1998 is equivalent to **B\$9,865** today *rounded*, without adjusting for inflation.

12. In *Daley v Harris para.16-018*, a postman aged 55 at date of the injury suffered a right knee injury causing acceleration of pre-existing asymptomatic arthritis by 12-15 years, with injuries also to his back, left elbow, head and groin. He was expected to continue having aching in knee and a twinge in his back. He was awarded £10,000 in 1996, which converts to about **B\$13,150** today, without applying an inflation adjustment.
13. The final case cited by Mrs. Rolle was *Re Morton para.16-019* involving male aged 39 at injury and 46 years at trial, who suffered a soft tissue injury to knee, acceleration by 10 years of pre-existing asymptomatic arthritis. His duration of injury and prognosis was that his knee swelled and locked every few months, and he experienced continuing pain. He was awarded £8,500 in 2000 which converts to **B\$11,180** rounded in today's values, without adjusting for inflation.
14. The average of the awards in the three cases above, cited by Plaintiff's counsel is approximately \$11,400.00. Counsel for the Defendants submitted that an appropriate award for the Plaintiff's damages is in the region of \$10,000 to \$15,000.
15. There are two additional factors on quantum to be mentioned. First is that if adjustments were made on account of inflation over the past 20 years that would likely drive the figures higher and closer to the \$15,000 mark or above. Second, it must be noted that here Mrs. Lambert has had a complete recovery, or at least has no continuing knee injury or symptoms; there was no asymptomatic arthritis. Further, there is no evidence that the shortness of breath is still an issue. Also, she delivered of a healthy baby boy who is today 10 years old.
16. Taking all of that into consideration I will award \$10,000 for her general damages.

SPECIAL DAMAGES

17. Three items were listed in the Amended Statement of Claim filed on 18 September 2017. Two of those were newly claimed in the amended pleading, namely the loss of additional income and the cost of household help. There was no objection to the claim for "medical report", which was actually three receipts produced for dates in May 2010 totalling \$160, none of which was stated to be for a medical report. Nevertheless counsel for the Defendants did not object to this item, and it is allowed.

18. However, Mrs. Williamson-Smith did object to the claim for Loss of Subsidiary or Additional Income in the amount of \$1,000 which was added in the Amended Statement of Claim. Her submission at paragraph 43 of her Skeleton Submissions, that this item is contrary to the Plaintiff's terms of employment pursuant to Rule 900 of General Orders, is accepted. The Plaintiff testified that her baking and drinks business was conducted within and had the approval of her department. However, there being no proof supplied of *prior written approval* having been granted by the Permanent Secretary of the Department of Public Service, this item is therefore disallowed.

19. The Plaintiff testified that she had a six-year old daughter at the time of this incident. This coupled with the period of time she was hospitalized – which was not contested by the defence – evidences the need for her to have additional household help. Therefore the claim for \$250 for this item is allowed.

AWARD

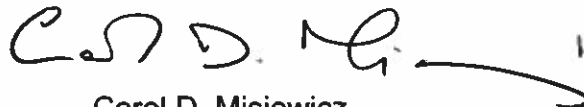
20. In sum the damages assessed as due to the Plaintiff are as follows:

General damages	\$10,000
Special damages	\$410.00
TOTAL	\$10,410.

21. In accordance with the finding on liability by Senior Justice S. Isaacs (as he then was), the Plaintiff can recover 85% of this sum from the Defendants, i.e. **\$8,848.50**. Final judgment may be entered for this amount.

22. Costs are of course for the Plaintiff, to be taxed if not agreed.

Dated the *29th* day of *June* A.D., 2018



Carol D. Misiewicz
Deputy Registrar (Acting)