

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

2004/CLE/GEN/00090

COMMON LAW AND EQUITY DIVISION

BETWEEN

BLANCHE GIBSON

Plaintiff

And

PUBLIC HOSPITAL AUTHORITY

Defendant

Appearances: Krystal Rolle for the plaintiff
Jennifer Mangra and Janet Hall for the defendant

ASSESSMENT OF DAMAGES

Estelle G. Gray Evans, Registrar

This is an assessment of damages for personal injuries and loss sustained by the plaintiff on the August 12, 2002 as a result of a fall which the plaintiff alleges was caused by the negligence and/or breach of duty under the Health and Safety at Work Act 2001, of the defendant its servants and or agents as the employer of the plaintiff.

- 1) The plaintiff's action commenced by a generally indorsed writ of summons against the defendant, filed January 27, 2004. The plaintiff's statement of claim was filed on July 20, 2004. Although the defendant entered an appearance on February 16, 2004, no defence was entered, and on January 1, 2005, the plaintiff entered judgment in default of defence for damages to be assessed with interest and costs.
- 2) The defendant, not having filed a defence, has conceded liability.

- 3) A notice of appointment for the assessment of damages was filed on January 5, 2005, and this matter came on for hearing on April 13, 2005.
- 4) The plaintiff in her statement of claim particularized her injuries thus:
 - **Compression fracture of the Cervical Spine**
 - **Degenerative arthritis with osteophytic spurring and posteriorly bulging discs between C4-5 and C5-6**
 - **Bulging discs of the lumbar sacral spine at L4-L5 with disc degeneration with endplate changes between L4-5 and a diffusely bulging disc between L4-5 causing ventral thecal indentation**
 - **Migraine headaches and dizziness resulting from head injury**
 - **Numbness in the fingers and abrasions to the forearm**
- 5) The plaintiff's medical evidence consisted of her viva voce evidence and written reports from various doctors and medical facilities from whom she received treatment. Such reports were contained in the plaintiff's bundle of documents, which had been agreed with counsel for the defendant.
- 6) The plaintiff's evidence is that while at work on August 12, 2002, she attempted to sit in a chair on the ward where she worked at the Sandilands Rehabilitation Centre (Sandilands); that the chair collapsed causing injuries to her head, back and arm. She said she was referred to Accident and Emergency Department of Princess Margaret Hospital (Princess Margaret Hospital) by Dr. Brandon Francis, a doctor at Sandilands,.
- 7) At the Princess Margaret Hospital the plaintiff she was seen by Dr. Brandon Curtis, who referred her to Doctor's Hospital where she had a cat scan then returned to the

Accident and Emergency at Princess Margaret. She was eventually admitted to the female surgical ward at Princess Margaret.

- 8) The plaintiff says that she stayed in hospital for five (5) days during which time she received treatment from Doctors Curtis and Magnus (Ekedede).
- 9) The plaintiff says that after her discharge from Princess Margaret she continued to receive treatment from several doctors; that she underwent physiotherapy at Doctors Hospital and that she had two (2) MRI examinations from that facility.
- 10) According to the medical reports, in his referral of the plaintiff to the Accident and Emergency at Princess Margaret, Dr. Francis indicated that the plaintiff had fallen on her back, hitting the back of her head and left forearm; that she was complaining of having pain all throughout her body; that there were no significant injuries, but since she was complaining of pains he requested that the attending physician do some thorough x-rays to rule out any cause of the "pains."
- 11) The plaintiff was then transported to Princess Margaret where she was examined and a note, apparently by the attending physician, appended to the Sandilands referral form, indicated that she had had x-rays of the cervical spine and a ct scan. The note said that she was suspected of having fractured the C6 vertabrae – spur anteriorly and that she was admitted to the Orthopedic Ward of the PMH for observation.
- 12) There is nothing else about the plaintiff's stay in the hospital although she says that she stayed in hospital for five (5) days during which time she was treated by Doctors Brandon Curtis and Magnus Ekedede.

- 13) The plaintiff says that after her discharge from Princess Margaret she continued to receive medical treatment and was unable to return to work for about nine (9) months because of her injuries.
- 14) In support of her unfitness for work the plaintiff produced several medical certificates for the period she was away from work.
- 15) The first medical certificate, dated August 16, 2002, the day of the plaintiff's release from the hospital was for ten (10) weeks. It was issued by Dr. B. A. Curtis and indicated that the plaintiff was suffering from a "compression fracture cervical spine 5."
- 16) That period of confinement ended on October 18, 2002.
- 17) Thereafter the plaintiff's medical certificates were issued for various periods of three (3) or four (4) weeks until she returned to work on June 2, 2003.
- 18) The plaintiff's documentary medical evidence included two (2) x-ray request and report form from Doctors Hospital (Bahamas) Limited – one dated September 6, 2002, and the other November 8, 2002. The impression of the MRI Technician in the reports were as follows:
 - i) **"Findings are suggestive of disc degeneration with endplate changes between L4-5 and a diffusely bulging disc between L4-5 causing ventral thecal indentation, but not causing neural canal encroachment as described. Clinical correlation was recommended."** (September 6, 2002)
 - ii) **"Findings suggestive of degenerative arthritis with osteophytic spurring and posteriorly bulging discs between C4-5 and C5-6 causing ventral thecal indentation as described. Clinical correlation was recommended."** (November 8, 2002).
- 19) It is clear that the plaintiff's second and third injuries as pleaded in her statement of claim came from the MRI reports.

- 20) Counsel for the defendant submits that the MRI did not give results but merely an impression and pointed out that there was no accompanying clinical diagnosis, although in both instances "clinical correlation" was recommended.
- 21) Counsel for the plaintiff responded that the impression was that of the Radiologist indicating what the MRI revealed and she invited the court to take the results, along with the medical reports of the doctors, as being indicative of the injuries which the plaintiff suffered
- 22) In this regard, Dr. Rahming in his report to Dr. Robert Gibson of January 8, 2003, indicated as part of the "history presenting complaint" that the plaintiff was treated for a neck injury of the C5-C6 region; that she had a bulging disc there and that this was confirmed by an MRI of the cervical spine; that an MRI of the lumbar sacral spine also showed a bulging disc from L4-L5.
- 23) Dr. Rahming also assessed the plaintiff as having benign positional vertigo secondary to her closed head injury, migraine headaches and symptoms that were suggestive of a left C6, C7 radiculopathy with numbness of the left fingers vs. carpal tunnel syndrome, although he made no objective findings as was the case of the symptoms suggestive of intermitted lumbar sacral radiculopathy.
- 24) It is interesting to not, however, that in his letter dated May 27, 2003, to Sandilands Rehabilitation Centre, Dr. Rahming advised that the plaintiff was under his medical care and that he had diagnosed her as having a bilateral C6-C7 radiculopathy and L5-S1 radiculopathy as a result of which she was to be given light duties for three (3) months.

- 25) In June 2003, Dr. Gibson advised the Human Resources Unit at Sandilands Rehabilitation Centre that the plaintiff had "sustained injuries to the cervical and lumbar spines as well as the upper extremities." That, although, she was then fit to return to work with some restrictions, she still required continued therapy sessions as well as continued medical followup.
- 26) I accept the evidence regarding the plaintiff's injuries, which, as counsel for the plaintiff pointed out, was not challenged by any evidence of the defendant, and find that the plaintiff suffered the injuries particularized in her statement of claim.
- 27) Now to the issue of damages.
- 28) The plaintiff claims no special damages.
- 29) The plaintiff does however claim general damages for pain and suffering and loss of amenities.
- 30) The plaintiff's evidence is that after the fall, she felt pain throughout her body and this was conveyed to Dr. Francis before he referred her to the Accident and Emergency at the Princess Margaret.
- 31) During her evidence the plaintiff indicated that she has had a number of medications, including painkillers, prescribed for her since the accident and that at the date of the hearing she was still taking painkillers for pain in her neck and back.
- 32) She said that after the accident she experienced headaches, dizziness and numbness in her left fingers, none of which she had experienced prior to the accident. She also said that she was having a lot of pain in her legs and in addition to the prescribed painkillers she also had to undergo physiotherapy. She said she eventually had surgery on her left wrist because of the carpal tunnel syndrome.

- 33) The plaintiff's evidence is that since the accident she finds that she cannot climb stairs, sweep, mop and clean her house, as she was able to do before the accident.
- 34) The plaintiff returned to work on June 2, 2003, but with advice from her doctor to engage only in light duties.
- 35) She says she was still experiencing pain in her neck and back; that she has not made a full recovery and strongly resisted counsel for the defendant's suggestion that she had.
- 36) Defendant's counsel made much of the fact that the plaintiff produced no documentary evidence of the physiotherapy treatments and medication to which the plaintiff referred in her evidence. The plaintiff however gave evidence that the bills for such treatment and medication were all forwarded to and paid for by the National Insurance Board.
- 37) Counsel for the plaintiff submitted that the reason for not having tendered those bills in evidence was because the plaintiff had not claimed special damages,
- 38) I found the plaintiff to be a credible witness and accept that she did in fact attend physiotherapy sessions at Doctors Hospital and took the medication indicated.
- 39) Finally, the plaintiff gave evidence that Dr. Magnus Ekedede on August 26, 2003, had assessed her disability at 35% for life. The plaintiff said that she had received a one-time disability benefit payment from the National Insurance Board and that she continues to receive monthly benefits from them.
- 40) It is of course accepted that, in arriving at a reasonable award, the assessor must have regard to comparable awards within the jurisdiction for comparable injuries so

far as possible and where there are multiple injuries affecting different parts of the body, each injury must be taken into account in assessing the global sum.

- 41) The plaintiff suffered multiple injuries and counsel for the plaintiff suggested that the court adopt the procedure recommended by the Learned Judge in Brown v. Woodall 1995 P I O R Q36 at Q39 in awarding damages for multiple injuries be followed in this case. In his judgment at page Q39 Sir John May, said:

“In this type of case in which there are a number of separate injuries, all adding up to one composite effect upon a plaintiff, it is necessary for a learned judge, no doubt having considered the various injuries and fixed a particular figure as reasonable for each, to stand back and look at what should be the global aggregate figure and ask if it is reasonable compensation for the totality of the injury to the plaintiff or to consider whether it would in the aggregate be larger than was reasonable?”

- 42) As expected counsel for the plaintiff and the defendant differed on what would be a reasonable as a global award for pain and suffering and loss of amenity.
- 43) In addition, counsel for the defendant submitted that whatever sum was awarded, the payments from National Insurance Benefit and Assistance Account should be deducted from therefrom, but counsel for the plaintiff rightly pointed out that such payments would ordinarily be set off against special damages, which the plaintiff had not claim.
- 44) Dr. Gibson in his report of June 29, 2003, after the plaintiff returned to work, opined that with time and continued treatment, the plaintiff will be able to return to full performance in the work place. He recommended that a yearly review be performed until she was fit to return to full function on the job. He was of the view that “the prolonged period of follow up was predicated by the nature of the structural changes incurred by her injury. “

- 45) However, according to a letter dated 26 November 2003 from the National Insurance Board to the plaintiff, Dr. Magnus Ekedede on Tuesday, August 26 2003 gave her a final assessment of 35%
- 46) At the date of the hearing the plaintiff said she was still unable to perform certain household chores, which she could have before the accident, but she also admitted that it had been a while since she attempted such chores.
- 47) She said that she underwent therapy from October 2002 until July 2003 – 3 days per week – for her neck, back and legs.
- 48) At the date of the accident the plaintiff was 47 years and worked at the Sandilands Rehabilitation Centre as an auxiliary nurse, a position she said she held since 1999. Her work required her to turn and lift patients, which she says she can no longer do.
- 49) She said that she still experiences pain in her neck and back every couple of days and that she continues to take medication for pain.
- 50) Counsel for the plaintiff submits, and I accept, that the defendant has adduced no evidence contrary to what the plaintiff has presented and therefore the plaintiff's evidence remains unchallenged.
- 51) The plaintiff suffered multiple injuries which included injuries to her neck and back as well as a closed head injury with associated migraine headaches and vertigo. She also suffered numbness in the fingers of her left hand and was diagnosed as having carpal tunnel syndrome in her left hand and for which she underwent surgery.
- 52) Counsel on both sides referred to a number of English cases. However, counsel disagreed as to the severity of, and therefore the amount to be awarded in respect to, the plaintiff's injuries.

- 53) For example, with regard to the neck injury - Defence counsel was of the view that the plaintiff's injuries were more along the lines of a whiplash and recommended an award of \$15,000.00, while counsel for the plaintiff expressed the view that the injury was much more serious and suggested \$35,000.00 as reasonable.
- 54) For the back injury, counsel for the defence said \$12,000.00 and counsel for the plaintiff recommended \$30,000.00.
- 55) The parties were within one thousand dollars of each other in their suggestion as to what would be a reasonable award for the head injuries; and
- 56) The defence recommended \$2,000.00 as reasonable compensation for the Carpal tunnel syndrome, while the plaintiff said \$8,000.00 was reasonable
- 57) In the end, counsel for the defence suggested a global award of \$33,000.00 while counsel for the plaintiff said \$80,000.00 was reasonable.
- 58) It is well settled that in most cases involving personal injuries, the amount of the award usually turns on the type and seriousness of the injury and each case must be decided on its own merits.
- 59) Having regard to all the relevant circumstances including the plaintiff's age, her chances for continued employment, the reports of the various doctors, the submissions and authorities cited by both sides, the dicta of Sir John May *supra*, I consider the sum of \$55,000.00 reasonable compensation for the plaintiff's pain and suffering and loss of amenity and would so award.
- 60) The plaintiff also claimed interest pursuant to section 3 of the Civil Procedure (Rate of Interest) Act 1992.

- 61) By the said section 3, the court is given the power to award interest on damages, or on such part of the damages as the court considers appropriate unless the court is satisfied that there are special reasons why no interest should be given in respect of these damages.
- 62) Having regard to all the circumstances, I would award interest on the general damages of \$55,000.00 at the rate of 2% per annum from January 27, 2004, to the date hereof and thereafter interest shall run on the judgment debt of \$55,000.00 plus interest as aforesaid at the rate of 10% per annum, pursuant to the provisions of the Civil Procedure (Rate of Interest) Rules S.I. No. 70 of 1992 until payment.
- 63) Costs are awarded to the plaintiff, to be taxed if not agreed.

Dated the 26th day of May A.D. 2005


Estelle G. Gray Evans
Registrar