

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION

2018/CLE/GEN/01048

BETWEEN

CORALEANE MUNROE-VESPRY

Plaintiff

AND

**MINISTRY OF EDUCATION
JANICE M. MOSS
ATTORNEY GENERAL**

Defendants

Before: The Honourable Justice Camille Darville Gomez

Appearances: Miss Sherita Forbes for the Plaintiff

Mr. Keith Cargill for the Defendants

Hearing Date: December 1, 2021

Practice and Procedure – Negligence – Personal injuries - Interim payment – whether a proper case for the exercise of the court’s discretion where the Defendants’ version of the accident if proven at trial shows a reasonable chance that the Defendant may not be found liable

DARVILLE GOMEZ, J

1. I gave my oral decision in this matter and promised to put my reasons in writing which I now do.
2. The Plaintiff in this action sought by Summons an interim payment in the amount of \$50,000 or such sum as the Court deems just pursuant to Order 29, rule 10 of the Rules of the Supreme Court and/or under the inherent jurisdiction of the Court on the ground that the Plaintiff would succeed in the action on the question

of liability without any substantial reduction of the damages for fault on her part. The Summons is supported by an Affidavit of the Plaintiff.

3. I refer to the dicta of Charles, J in *Rahming v Super Value Food Stores Limited* regarding the matters that the Court must take into consideration when determining the appropriate interim amount as follows:

“In determining an amount of interim payment, the Court must firstly assess the likely amount of final judgment leaving out of account the heads of future loss. In other words, the assessment should comprise only of special damages to date and damages for pain, suffering and loss of amenity, with interest on both.”

4. The Defendant objected to the application for an interim payment on the basis that Order 29, rule 12(1) provides for the circumstances in which an order for interim payment can be made as follows: (a) where liability is admitted; (b) where judgment is found in the Plaintiff's favour; (c) where if the claim went to trial, there is a reasonable chance that the Defendant would be found liable.
5. The Defendant submitted that (a) liability has not been admitted; (b) judgment has not been found in the Plaintiff's favour; and (c) that that if the claim goes to trial that the Defendant will not be found liable.
6. The Defendant's version of the accident as contained in their Defence at paragraph 3:

“i) The Plaintiff was given prior and sufficient warning by an employee of the First Defendant who was mopping not to walk on the floor of the said corridor due to the fact that it was wet from being mopped.

ii) The Plaintiff chose to disregard the said warning and walked on the said floor of the corridor.

iii) The Defendant avers that the Plaintiff choice to walk on the said floor of the corridor having been given notice that it was wet is evidence of the fact that the Plaintiff did walk at her own risk at all material times.”

7. The Plaintiff's Counsel submitted the following for consideration when awarding an interim payment in favour of the Plaintiff:
 - (i) The Plaintiff suffered L4-L5 and L5-S1 Severe Stenosis with Sciatica and Parathesia and cramps radiating to the lower extremity and Cauda Equina Syndrome. Counsel referred to *Allen v Ware & Michael Constuction* where general damages were awarded in the sum of 157,878.28 pounds (converted to \$205,241.76).

- (ii) The JSB Guidelines gives the range of 14,000-40,300 pounds (which converts to \$18,200-\$52,390) for Moderately Severe Depression.
- (iii) Her yearly salary which had been stopped in February, 2018 which amounted to 45 months (and continuing) which totaled \$93,000.15
- (iv) The Plaintiff has claimed Special Damages in the sum of \$253,385.70 plus interest of 10% for a total of \$279,242.73. These sums are set out in her Affidavit filed on November 24, 2021.
 - (i) \$37,200.06 for loss of earnings
 - (ii) \$929.00 for Medical bills
 - (iii) \$670.92 for Medication
 - (iv) \$124,200.20 for Disadvantage on the job market
 - (v) \$61,200.00 for Home care 24th January, 2017 – 1st September, 2019
 - (vi) \$1,207.11 for Orthopedic Mattress at Imperial Mattress
 - (vii) \$65,000 for Aggravated/Exemplary Damages
 - (viii) \$850.00 for Filing of Writ and Service of Documents
- (v) Aggravated Damages pursuant to **Rookes v Barnard [1964] 1 All ER 367, HL**

8. I refer to the Plaintiff's Counsel submissions in response to that of the Defendant:
- "The Defendants propose a Defence that the Plaintiff was contributorily negligent in that she was given prior and sufficient warning before entering the wet floor. We submit that this is not the case, as nowhere was there a wet floor sign indicated on the wet floor or prior to entrance on the wet floor."*
9. The Plaintiff appears in her submissions to be giving evidence rebutting the Defendant's version of events which led to the accident. This is unacceptable and improper.
10. The Court cannot determine prior to trial and on the pleadings alone, the veracity of either party's version of the events which led to the accident. What is obvious from the pleadings from both parties is that liability is an issue to be determined at the trial because it is not admitted by the Defendants.
11. Further, the Defence is pellucid and if the Defendants are able to prove their allegations at the trial they would not be liable for the accident or any loss, injury or damage sustained by the Plaintiff as a result.
12. Having regard to the above, I am unable to find that this is the proper case for an interim payment.

13. Accordingly, I do not accede to the Plaintiff's application for an interim payment. I am mindful of the history of this matter as it relates to counsel and therefore, I make no order as to costs.

Dated the 4th day of April, 2022

A handwritten signature in black ink, appearing to read 'Camille Darville-Gomez', written in a cursive style.

Camille Darville-Gomez
Justice