

IN THE SUPREME COURT OF BELIZE, A. D. 2013

CLAIM NO. 405 OF 2013

BETWEEN	(MANUEL SOSA	CLAIMANT
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	(AND	
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	(YSUSF MUHAMMAD BILAL	FIRST DEFENDANT
	(BILAL WELDING SERVICE	SECOND DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Michael Young, SC, for the Claimant

Mrs. Michelle Trapp-Zuniga of Belize Legal Advice and Services for the Defendants

D E C I S I O N

1. This is a claim for assessment of damages for personal injury arising from dog bites inflicted by dogs belonging to the First Defendant, Mr. Bilal, on the Claimant. The Claimant is a Judge and the President of the Court of Appeal. The Second Defendant is a welding business owned by the First Defendant. The Claim was filed on July 25th, 2013 and an Acknowledgment of Service was filed on August 15th, 2013. No Defence was filed and

judgment for damages to be assessed in default of filing a Defence was filed on October 18th, 2013. This Court made an Order June 20th, 2014 for the assessment of damages including that damages be given by affidavit. The Claimant filed four affidavits in relation to the assessment. No affidavits were filed by the Defence.

The Facts

2. The Claimant states that he was injured when he went to Bilal's Welding Service on 17th August, 2007 to do business with the First Defendant. Having entered the premises which were open to the general public, he was suddenly attacked by a large black dog which bit him on his right thigh and then his left leg. The Claimant stated that as was retreating, he then heard barking and saw a second dog behind him pouncing menacingly towards him. A young boy then came out of the workshop and held the dog that had already bitten the Claimant and a young man later came out of a house at the back and told the young boy that the black dog should not have been in the workshop. The Claimant described the "*state of heightened terror*" and pain he felt as a result of the bites. He left the premises and went to seek medical attention from Dr. Francis Longworth, who has filed an affidavit detailing the Claimant's injuries and the

treatment he prescribed. The Claimant was treated for the bites and advised as to the risk of contracting tetanus and rabies and he then sought legal advice on September 14th, 2007 from Rodwell Williams Attorney at Law. He showed the bite marks to Mr. Williams who has also filed an affidavit describing the injuries he saw on the Claimant. Later that day he visited the Defendants' premises where he asked Mr. Bilal to visit his home (which was about a five-minute walk away from the welding shop) between 1:00 p.m. and 4:00 p.m. to discuss the matter. The Claimant waited for the Defendant and his wife (who Mr. Bilal claimed owned the welding business) to come to his home but they never did. The Claimant also states that he consulted Dr. Carlos Alberto Ramirez Moreno in Chetumal Mexico on August 25th, 2007 and he prescribed medication for relief from anxiety. The Claimant describes how he lived in a state of fear of contracting tetanus for several days and/or rabies for several months. He has been left with scars on both his thighs and legs as a result of the puncture wounds caused by the dog bites. He suffered deep anxiety for a long time. On July 11th, 2013 the Claimant instructed Messrs. Michael Young and Co. Attorneys at Law to file this claim on his behalf.

3. Mr. Young, SC, on behalf of the Claimant submits that the events described by the Claimant in his affidavit would naturally cause shock to any victim and put him or her in a state of terror and fear. He was attacked by two dogs and these attacks were multiple and successive. Mr. Young, SC, further points out that the witness Dr. Longworth observed that *“it was clear that he had been terrified as a result of the attack and that he was in fear of contracting tetanus or rabies”*. Dr. Longworth further states that he advised the Claimant to apply a peroxide solution and mercurochrome to his wounds for the next few days. Learned Counsel also points out that the Claimant had to be treated for anxiety as a result of these attacks.
4. The Claim is for Special Damages in the sum of \$113.67 to cover the cost of the visit to the doctor and the cost of the new pair of blue jeans that was destroyed.
5. Mr. Young, SC, states that the assessment of non-pecuniary loss has its challenges, and that it is nothing like a precise mathematical exercise or process by which a definite amount is computed. To assist the court in determining quantum, he cited several authorities of awards made in comparable cases. In *Reardon v Hobbin* 2004 4 QR 7 [Case Digest] the court

awarded the sum of 2000 pounds (BZ \$6440) for General Damages where a female age 47 had been bitten on her right thigh by a dog. The bites caused two superficial injuries 2 cm and 1 cm in length with a small area of bruising surrounding the wounds. R was taken to the hospital and a tetanus injection applied, and she was released with a course of antibiotics. The award took into account the victim's psychological reactions to the event which the Court found were of more significance than the physical symptoms.

In ***Barraclough v. Saunders*** [1994] CLY 1752 (Case Digest) a 40 year old man was attacked by a dog and suffered bites on the stomach, left wrist, right forearm and left buttock. He received a laceration to the left wrist and puncture wounds to the other areas as a result of the bites, and he was left with minor scarring. The Court awarded him the sum of 3000 pounds as general damages (BZ \$9660).

In ***Michelle Hilder v Donovan Michael Jafta et al*** [2008] ZAKZHC 92 the Plaintiff was attacked by a dog when she went jogging. She was thrown to the ground and she suffered multiple puncture wounds. At one point the dog was shaking its head from side to side whilst having her held. The

Plaintiff spent the night in the hospital and was released the afternoon. She underwent an operation to debride the wounds, suture, repair them and apply suitable dressings. She was off work for three weeks and suffered and developed a phobia about dogs. She was awarded the sum of 30000 South African dollars (BZ \$5460) for pain and suffering, to include costs of psychiatric and psychological counselling.

In ***Sarah Taylor v Catherine O'Hare and John Farrell*** [2002] NIQB 59 (25 Oct 2002), the Plaintiff was a 59 year old housewife who was attacked by two dogs as she walked past a house owned and occupied by the First Defendant. The first dog rushed out and seized the Plaintiff by her left wrist and held on to her. As she struggled to break free, a second dog ran out of the First Defendant's house and put its large paws on the Plaintiff's back causing her to fall to the ground. Both dogs then together attacked the Plaintiff for ten minutes until she was rescued by a neighbor. The Plaintiff was admitted to hospital and suffered from multiple teeth marks and puncture wounds over her right arm and forearm and a painful left wrist and right ankle, along with bruising and abrasions over the region of her left loin. She remained with scarring ranging in size from 0.5 cm to 1.5 cm and weakness in her left wrist. As a result of this incident, the Plaintiff was

left with a great fear of dogs which has inhibited her in going out for walks (as she had previously been accustomed to doing prior to the attacks) and a lifelong fear of dogs. The court awarded her the sum of \$7500 pounds against the owner of the first dog and \$10,000 pounds as against the owner of the second dog. There was also evidence from a Psychiatrist who examined the Plaintiff three years after the incident proving that she had developed a phobic anxiety disorder evoked solely or predominantly by encountering dogs; the court also therefore awarded the additional sum of \$10,000 pounds as against both defendants jointly.

6. Mr. Young, SC, submits that on the facts of this case, including in particular the clear nature and disposition of the attacking dogs, the fact that the dog that bit the Claimant was large, the terror of the attack, the nature of the injuries suffered and the cases (including the factor of inflation) reasonable damages for pain and suffering would be BZ \$12,000.
7. Mrs. Michelle Trapp-Zuniga on behalf of the Defendant submits that in assessing damages the court is called upon to “measure the immeasurable” as described by Romer LJ in ***Rushton v National Coal Board*** 1953 1 QB 495. She states that Wooding CJ in ***Cornelliac v St. Louis*** (1965) 7 WIR 491 at 492

laid down the guidelines that the court must take into account when assessing general damages. Those are:

- a. The nature and extent of the injuries sustained;
- b. The nature and gravity of the resulting physical disability;
- c. The pain and suffering which had to be endured ;
- d. The loss of amenities suffered; and
- e. The extent to which, consequentially, the plaintiff's pecuniary prospects have been materially affected.

8. Mrs. Trapp-Zuniga submitted on behalf of the Defendant that the nature and extent of the injuries sustained as established in the evidence of the expert witness Dr. Francis Longworth was "*minor scratches on (i) the right upper thigh (one injury); (ii) anterior left calf (three injuries)*". These were the injuries observed by the witness on the body of the Claimant when the Claimant visited his office on the said morning of the incident. Learned Counsel also pointed out that the medical report of the expert witness dated the 17th day of August, 2007 provides the assessment/diagnosis to be "*minor abrasions due to dog bite*".

9. In relation to the second guideline laid down by *Cornelliac v St. Louis*, the nature and gravity of the resulting physical disability, Mrs. Trapp-Zuniga argues that this limb does not apply as there is no evidence before this court of any resulting physical disability.

10. Looking at the third limb of the test laid down by Wooding CJ, the pain and suffering to be endured, Mrs. Trapp-Zuniga points out that the Claimant stated at paragraph 20 of his Statement of Claim that, *“In consequence of the negligence of the Defendants, the Claimant has suffered pain, injuries, stress, anxiety and inconvenience”*. She contends that there is no evidence as to the length of time the stress and inconvenience was endured. Mrs. Trapp-Zuniga argues that while there is evidence of the physical injuries sustained by the Claimant, and she concedes that there would be an amount of Pain associated with such injuries, there is no evidence as to whether the Claimant is still in fear of further attacks by dogs as a result of this incident. There is no evidence as to the field of medicine in which Dr. Longworth is an expert, and there is only one instance on which Dr. Longworth speaks to the Claimant’s stress and anxiety at paragraph 9 of his affidavit. Mrs. Trapp-Zuniga also makes the point that there is no evidence as to whether the treatment for relief from anxiety which the

Claimant received from a doctor in Chetumal, Mexico was successful or not. She further submits that there is no evidence of any loss of amenities suffered by the Claimant, or whether the Claimant's pecuniary prospects have been materially affected.

11. Mrs. Trapp Zuniga also disputes whether interest should be awarded on general damages from the date of the incident (as requested by the Claimant) or from the date of the filing of the Claim Form. She submits that the appropriate award should be interest on general damages from the date of filing the Claim Form which would be 25th July, 2013 as in **Anil Reds v. Nya Rattan and Inshan Salim** Claim No CV 2007-00903 Trinidad. She also cites the case of **Samantha Anthony as Next of Friend of Okarine Anthony v Gregory Edward** SLUHCV 2008/065 where a minor was attacked and bitten by a Rottweiler dog on and above his buttocks. In awarding the sum of \$12,000 (BZ \$9,600) as general damages, plus interest at the rate of 6% from the date of service of the writ to date of the judgment, Justice Georges said:

"I am aware of the school of thought advanced before us that a trial judge may take into account damages awarded in comparable cases but is in no way bound to. I believe that that school of thought has served its time and has been replaced by the more modern school as expressed in

Wells v Wells (a House of Lords decision) wherein Lord Hope of Craighead observed that:

'The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum with the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the Court's best estimate of the plaintiff's general damages.'"

Mrs. Trapp Zuniga finally submits that the Court should award the sum of \$5,000 BZ to the Claimant as reasonable general damages for pain and suffering.

Ruling

12. I thank both counsel for their submissions which assisted the court in determining the quantum of damages to be awarded in this matter. It is very unfortunate that the Defendant did not see it fit to try and resolve this matter, and instead chose to ignore the invitation of the Claimant to discuss and attempt to settle this issue. It shows a callous disregard for safety and well-being of his customers in general and for the Claimant in particular since it was in the course of seeking the services of the Defendant's welding shop that the Claimant was attacked by the Defendant's dogs. Unlike the Sarah Taylor's case cited above, this court does not have any evidence from a Psychiatrist as to whether the Claimant is still suffering psychological trauma/lasting fear of dogs as a result of this

incident. Having considered all the evidence and the authorities submitted by both sides, I am of the view that the sum of \$113.67 as special damages, and \$10,000 BZ should be awarded as general damages to the Claimant as compensation for pain and suffering. I also award interest at the rate of 6% from date of filing of writ up to date of judgment.

Costs to be agreed or assessed.

Dated this 16th day of February, 2015

**Michelle Arana
Supreme Court Judge**