

IN THE SUPREME COURT OF BELIZE, A. D. 2015

CLAIM NO. 9 OF 2015

(OSCAR SANCHEZ	CLAIMANT
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BETWEEN (AND	
(
(DISCOVERIES GEOPHYSICAL SERVICES LTD.	DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Oswald Twist and Mr. Nicholas Dujon, SC, for the Claimant

Ms. Nazira Espat of Chebat and Co. for the Defendant

D E C I S I O N

1. On or about the 5th day of May, 2013 Mr. Oscar Sanchez, the Claimant, was a passenger in a Toyota Hilux Pick-up truck owned by Discoveries Geophysical Services Ltd., the Defendant, and driven at the material time by the servant or agent of the Defendant. Whilst driving the said vehicle the servant or agent of the Defendant so negligently drove, managed or controlled the vehicle on a road in the Kitty Bank area in the Cayo District that he caused or permitted the said vehicle to run off the road and into a ditch adjacent thereto.

2. The Claimant avers as against the Defendant the following particulars of negligence:
 - a) Driving at a speed which was excessive in the circumstances;
 - b) Failing to keep any or any proper lookout;
 - c) Failing to stop, slow down, to swerve or in any other way to so manage or control the said motor vehicle as to avoid running off the road;
 - d) So far as may be necessary the Claimant will rely on the doctrine of *res ipsa loquitor*.
3. By reason of the matters aforesaid, Mr. Sanchez sustained severe injuries and has suffered loss and damage.
4. On January 12th, 2015 this Claim for damages was filed in the Supreme Court. The Claim and Statement of Claim were served on the Defendant by serving Mr. Noe Villeda Manager of the Defendant Company on January 21st, 2015 as attested to in the sworn affidavit of Nicholas V. Dujon of 24 Tangerine Street, Belmopan. Acknowledgment of Service was filed on behalf of the Defendant by Chebat and Co. on January 29th, 2015.
5. On March 11th, 2015 the Claimant sought and obtained entry of judgment in default of Defence and that assessment of damages be made by way of affidavit evidence. To date, there has been no application by the Defendant to set aside the Default Judgment. The court now proceeds to assess the quantum of damages based on affidavit evidence.
6. In his affidavit dated July 6th, 2015, Oscar Sanchez says that he is the Claimant in this matter and he was born on December 1st, 1986. He was 28 years old at the date of swearing this affidavit.

7. At the date of the accident he was working as a driller helper for the Defendant Company and earned \$542.85 every 15 days as evidenced by the attached Atlantic Bank Ltd bank statement for the period 19th April, 2013 to 30th December, 2013 (Exhibit "O.S. 1").
8. He says that as a result of the accident he has been unable to work up to the date of the affidavit.
9. As a result of the accident, Mr. Sanchez received the following injuries:
 - a) Fracture of the left clavicle
 - b) Fracture of the sternum
 - c) Numbness of left foot
 - d) Scarring
10. He states that he still experiences pain in his chest, neck and left shoulder. He has obtained medical report from Dr. Andre Sosa, Orthopedic and Trauma Surgeon of Cayo Family Clinic and Pharmacy, showing the nature and extent of his injuries and his prognosis (Exhibit "O.S. 2").

Legal Submissions on the Quantum of Damages

11. Mr. Twist on behalf of the Claimant filed written submissions on the Quantum of Damages on October 16th, 2015. After setting out the injuries suffered by the Claimant, Learned Counsel submits that in assessing the level of damages recoverable for such an injury reference is made to the Judicial Studies Board Guidelines for the Assessment of General Damages in Personal Injury Cases 12th Edition 2013 ("The Guidelines").

(a) Fracture of the Clavicle

The level of the award will depend on the extent of fracture, level of disability, residual symptoms and whether temporary or permanent and whether union is anatomically displaced.

Recovery award 4,180.00 pounds to 9,900 pounds

In Belize currency at the rate of 3.1414 to one pound (Gazette dated May 23rd, 2015)

25% discount

Recovery award BZ\$9,848.90 to BZ\$23,324.90 median figure BZ\$16,586.59

Mr. Twist submits that an award of the median figure of BZ\$16,586.59 would be appropriate under this head.

(b) Fracture of the Sternum

Learned Counsel cites *Turay v Melford (Reading County Court)* 20th June, 1996. In that case the plaintiff was involved in a traffic accident whilst traveling as a front seat passenger. She was knocked unconscious and sustained the following injuries: a comminuted fracture to the distal radius and ulna of the right (dominant) wrist; lacerations to the dorsal aspect of the index, middle and little fingers; a rupture to the flexor tendons beneath lacerations to index and little fingers; lacerations to the left knee; a soft tissue injury to the neck; tenderness in the right lower ribs; a fractured sternum. The plaintiff's range of mobility in the right wrist had been consequently impaired and her right little finger had been deformed into a fixed position, with no

active movement at the distal end of the interphalangeal joint. Painkillers were required three times a day. She suffered a slight loss of grip strength and loss of manual dexterity which was a permanent condition. X-rays showed evidence of advanced osteo arthritic changes. The pain was likely to worsen and a future operation to repair the radiocarpal joint might be necessary. The plaintiff suffered some scarring: a 10 cm operative scar to the dorsal aspect of wrist and a 3cm scar over the left patella. She had recovered the full range of movement in the neck but still experienced dull non localised pain, especially on exertion. Pain remained continuously in the background extending down the thoracic spine to the lower pole of the scapula, and she experienced tenderness in the neck and over the sternum displaying a healed fracture deformity. The plaintiff had been unable to return to her pre-accident employment as a machine setter and had been unable subsequently to find suitable alternative employment. She was 50 years old at the time of trial. The Court awarded her 14,500 pounds as general damages in 1996. Today's value would be 27,277.71 pounds or BZ\$64,267.65.

(c) and (d) Numbness of Left Foot and Scarring

Mr. Twist submits that these two heads have been combined with a view to arriving at a settlement as clearly they would add at least another BZ\$10,000.00 to the equation. He says that the sum total of the figures suggested is \$90,854.24. However, having regard to the fact that a global award has to be made and the possible effects of overlap if the figures were not further discounted to reflect this fact, counsel suggests a figure of \$65,000.00 together with interest at 6% from May 5th, 2013 (date of accident).

Loss of Earnings

Mr. Twist says that as set out in the particulars of special damage loss of earnings amounting to \$22,500.00 plus \$8.00 for police report has been proven making a total of \$22, 508.00. Further loss of earnings from date of claim to settlement date would have to be calculated. Interest should be awarded at the rate of 6% per annum until payment. The Claimant is still unable to work.

Medical Report on Injuries

Dr. Sosa's report dated 9th March, 2014 verifies that he treated Oscar Sanchez and diagnosed him with left clavicle and sternal fractures as a result of a road traffic accident that occurred on May 5th, 2013. Mr. Sanchez attended at Western Regional Hospital and referred to Belize Medical Associates for further treatment. He was prescribed analgesics and given two months sick leave for convalescence.

Dr. Sosa further states that Mr. Sanchez again consulted him on 2nd July, 2013 and he was given additional time to allow for healing of fractures as per standard management. The sternal fracture healed but a non-union of the clavicle occurred. He was thus subjected to open reduction and internal fixation surgery of the left clavicle with plate/screws on 9th August, 2013. Follow up care was provided via outpatient clinic and physiotherapy clinic (from 4 weeks post operation). He did 20 therapy sessions. The implanted plate/screws were eventually removed after the fracture had healed on 18th December, 2013 and because of continuous pain, Dr. Sosa says that Mr. Sanchez continues on sick leave because of presence of pain in the chest and left shoulder. He does have full range of movement (ROM) in the left shoulder but movement is still slow.

Dr. Sosa states that the Claimant needs to continue with therapy and medications. He says the prognosis favourable but the recovery process does entail significant convalescence not least of all due the sternum injury. There is a heightened risk for osteoarthritis pain of the costo-sternal joints after such injuries. Incapacity is estimated at 12%.

Decision

In Claim No CV 2006-01035 ***Elva Dick-Nicholas v Jayson Hernandez and Capital Insurance Co Ltd.***, Madam Justice Pemberton cited Wooding CJ in ***Cornilliac v St. Louis*** (1965) 7 WIR 491. Her Ladyship stated: *“Wooding CJ in **Cornilliac v St. Louis** provided us with a time honoured approach to assessing General Damages in cases of this nature. The several sub-heads of damage to be contemplated 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, pecuniary prospects have been materially affected”*. I find that all the heads of damages have been proven. While Dr. Sosa in his medical report said that he was to re-examine the patient at the end of March 2014 to determine ability to return to work, no further report has been submitted to date. I am therefore unable to say whether Mr. Sanchez has been able return to work as of today’s date. I therefore award the following sums as proven heads of damages:

Pain and suffering and loss of amenities	\$65,000.00
Actual loss of earnings	\$22,500.00
Loss of earnings since Claim (39 weeks)	\$ 5,043.00

I also award interest of 6% per annum from date of accident until date of payment.
Costs of 60% of total sum awarded to the Claimant as per scale of prescribed costs in
Appendix B of the Civil Procedure Rules 2005 or BZ\$20,000.00.

Dated this Friday, 15th day of April, 2016

Michelle Arana
Supreme Court Judge