BARBADOS

IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
Civil Division

No. 1011 of 2010

BETWEEN

GAIL NEDD **CLAIMANT**

AND

BARBADOS TRANSPORT CO-OP SOCIETY LIMITED **DEFENDANT**

Before The Hon. Madam Justice Jacqueline A. R. Cornelius, Judge of the High Court

2014: June 10

Mr. Arthur Holder for the Claimant
Ms. Valentina Blackman for the Defendant

DECISION

Introduction

[1] This is a claim for the assessment of general damages for pain, suffering and loss of amenities stemming from a motor vehicle collision in which the Claimant sustained personal injuries.

THE FACTS

[2] The Claimant was born on 6 September 1983 and at the time of the accident she was employed as a waitress. On 29 July 2007 she was a passenger in a bus BT4 operated by the Defendant when it was involved in a collision at

Joe's Hill in the parish of St. Joseph. As a result of collision the Claimant sustained the following injuries: a mild cerebral concussion; multiple sharp trauma of the lower limbs; contusion of the left leg; contusion of the thorax and cervical deceleration and musculo-ligamentous injury to the lumbo-sacral spine.

[3] The Defendant has accepted liability for the accident and has paid to the Claimant special damages in the amount of $3,216.43 inclusive of future medical costs in the amount of $1,500.00.

ISSUE

[4] The only issue for the Court's consideration is the assessment of general damages for pain, suffering and loss of amenities.

EVIDENCE

[5] The evidence in this matter was contained in the Claimant's and Defendant's written submissions filed on 21 August 2012 and 25 September 2012 respectively.

[6] The Claimant submitted two (2) medical reports and a care needs report prepared by a nurse on behalf of the Defendant's insurer, Insurance Corporation of Barbados Limited (ICBL).

[7] The first report dated 2009-10-12 was prepared by Dr. M Marie and Mr. H Thani both of the Accident and Emergency (A&E) Department of the Queen Elizabeth Hospital (QEH). It states that the Claimant was involved in a road traffic accident and was seen approximately one hour after arrival at the QEH. The Claimant complained of headache, midsternal chest pain, right arm and left leg pain and thoracolumbar pains. The examination revealed that the cervical, thoracic and lumbar sacral spines were not tender and that the Claimant exhibited normal motor and sensory function. She was treated with intra venous diclofenac, a non-steroidal anti-flammatory drug to which she responded. Chest exam revealed no chest wall tenderness and clear lung sounds. A chest x-ray showed no rib fractures, haemoperitoneum or pneumohaemo thorax. An x-ray of the Claimant's left leg was normal. The Claimant was discharged on analgesia after being diagnosed as having soft tissue injury. The report further stated that the Claimant returned to the A&E department two days later complaining of abdominal pain radiating to the groin and inability to bear weight. She was re-evaluated, had a normal abdominal ultrasound, reassured of her soft tissue injuries and was

discharged. It was the medical opinion of the doctors that the Claimant's injuries were not life threatening or likely to cause any permanent disability and the Claimant was expected to make a full recovery within one (1) week.

[8] The second report of 27 August 2009 was prepared by Dr. Jerry Thorne FRCS orthorpaedic surgeon. In his report Dr. Thorne stated that he saw the Claimant on 2 August 2007 and that her examination revealed the following:

> "In the lumbosacral spine, bilateral straight leg raising in all positions was 90º. There was vague tenderness over the L4 spinous process with full range of movement of the lumbosacral spine without spasm of the vertebral muscles. There was no neurological deficit in the lower limbs. In the cervical spine there was tenderness over the right trapezium with reduced left lateral flexion and rotation. In the right lower limb there was a bruise over the right lateral thigh with superficial abrasions over the anterior patella and the adjacent proximal third of the right leg. In the left lower limb, there were multiple superficial abrasions over the thigh and leg. There was a tender edematous muscle over the leg, this was not firm. There was no evidence of fullness in the subfascial compartment. There was no neurovascular deficit in the left lower limb.
>
> There was full passive range of movement of the left ankle with markedly reduced active range of movement. Springing of the thorax produced vague discomfort anteriorly. Leading to the view that this lady probably had suffered a mild cerebral concussion. There was multiple, sharp trauma to the lower limbs, a contusion of the left leg, a contusion of her thorax, a cerbvical deceleration injury and a musculoligamentous injury to her lumbosacral spine."

[9] Dr. Thorne concluded that the Claimant's injuries attracted a mild to moderate degree of pain and suffering and that no further medical cost beyond $1,500.00 for anti-inflammatory drugs and the occasional visit to a physician were envisioned. Further, her injuries attracted no permanent physical impairment, disability or disruption to her social, recreational or

occupational activities. He noted that the Claimant had complained of pain in her foot which would be exacerbated owing to her wearing enclosed shoes at work and the nature of her job and so extended her sick leave so that the Claimant's return to work was delayed by the injury to her foot and the nature of her job but her employability was unimpaired and the Claimant made a largely expected uneventful recovery.

SUBMISSIONS

[10] Mr. Holder, counsel for the Claimant seeks general damages in the sum of $101,978.83. According to him, the Claimant still continues to suffer psychologically from the accident and he relied on the care needs report in support of his assertion. Counsel relied on the case of ***Jarvie v Sharp* (1991) Kemp and Kemp** where a 32 year old Claimant was involved in a road accident in which her youngest child was killed. There the claimant suffered scalp lacerations, injury to her left shoulder a deflection to her nose and experience a phobia about cars for more than 4 years after the accident. She was awarded the sum of £12,000.00. He also submitted the case of ***Kitching v Tesco Stores* (1995) Kemp and Kemp H4-033**. Counsel also seeks a Smith v Manchester award in the amount of $5,215.00

[11] Ms. Blackman, counsel for the Defendant submitted that based on the medical evidence, the Claimant is entitled to an award no higher than $10,000.00. Counsel referred to the prognosis of all the medical practitioners which indicated that the Claimant would make an uneventful recovery and she pointed to the Claimant's 5-6 week recovery period. She argued that an award of general damages for pain and suffering and loss of amenities will depend on the duration and intensity of the Claimant's pain and suffering as well as the extent of reduction in the Claimant's ability to perform everyday tasks and enjoy life. In this regard, Counsel pointed to the medical reports where the medical practitioners examined the Claimant and diagnosed her as suffering from mild pain. She also submitted that the general nurse hired by the Defendant is not a psychiatric nurse or qualified to make such a diagnosis concerning the Claimant's mental state. Moreover, Counsel distinguished the present case from that of ***Jarvie v Sharpie (supra)*** on the ground that the Claimant in this case was not diagnosed with suffering from psychological injury, trauma or disorder. Additionally, Ms. Blackman

argued that the medical evidence does not support the claim for a Smith v Manchester award.

[12] Counsel submitted that an award of damages should be determined by arriving at "a conventional figure derived from experience and from awards in comparable cases", relying on the words of Lord Diplock in ***Wright v British Railways Board*** **[1983] 2 AC 773**. She therefore submitted the following cases for the Court's consideration: ***Simpson v Sutton*** **(1999)** found at **Kemp and Kemp M1-046** (an awarded of £1,250 was made to the claimant who suffered superficial trauma to the lower hip, soft tissue injury to the anterior wall, bruising to the lower lumbar region and bruising to the right thigh and both knees); ***Shone v Brooks*** **(2002) Kemp and Kemp M1-039** (where the claimant was awarded £1,500 having sustained soft injuries to the lumbar spine, her upper arms both knees and ankles and made a complete recovery within 3 months); ***Derbyshire v Derbyshire*** **(2003) Kemp and Kemp M1-004** (the claimant was awarded £2,500 for soft tissue injuries to her sternum, rib cage, trunk and thoracic and upper lumbar spine in a traffic accident); **Nee v Jackson Kemp and Kemp (2006) M1-027** (general damages agreed and approved in the sum of £2,250 where the claimant sustained superficial cuts and grazing to the right elbow, thigh and knee, deep cut to the right ankle, injury to neck and head).

ASSESSMENT OF DAMAGES

[13] Wooding CJ in ***Cornilliac v St. Louis*** **(1965) 7 WIR 491** laid down five factors that should be taken into account in the assessment of general damages.

The Nature & Extent of the Injuries Sustained

[14] First, the claimant suffered injuries soft tissue injuries to her head, back and legs. The x-rays of the Claimant's leg and thoraco-lumbar were normal and the chest x-ray showed no rib fractures. Her injuries were of such nature that she was given analgesia and discharged the same day. She sustained abrasions but no neurological deficit in the lower limbs.

The Nature and Gravity of the Resulting Physical Disability

[15] Second, the medical reports disclosed no resulting disability. The medical practitioners unanimously stated that the Claimant's injuries do not appear to be life threatening and expected her to make a full recovery. The prognosis

in the first report was that of one week and in the second report within approximately 6 weeks.

The Pain and Suffering Endured

[16] Third, the medical reports state that the Claimant suffered a mild to moderate degree of pain. She endured this pain for a short period of time and was given a non-steroidal anti-inflammatory and analgesia.

The Loss of Amenities Suffered

[17] Fourth, it was submitted that the Claimant as a mother of an infant child was unable to take care of her maternal responsibilities and relied on assistance from her mother. Additionally, she was unable to complete basic domestic chores such as sweeping, mopping or lifting heavy objects. The Court observes that the medical evidence does not support Mr. Holder's argument that the severity of discomfort forced her to change her job. Dr. Thorne in his medical report stated that the Claimant's injuries attracted no disability with regards to the Claimant's occupational recreational or social activities. Further, Ms. Blackman asserts that the Claimant's change of job may be attributed to the closure of the restaurant at which she worked.

The Extent to which the Claimant's Pecuniary Prospects have been materially Affected

[18] The medical evidence establishes that the Claimant's pecuniary prospects have not been affected. The Claimant's injuries attracted no permanent physical impairment or disability.

[19] The Court having considered the authorities cited and taking into account the evidence before it, finds that an award of $8,500.00 to be fair and reasonable in all the circumstances.

DISPOSAL

[20] The Claimant is awarded the sum of $8,500.00 as general damages.

[21] Interest on general damages shall be at the rate of 6% from today until payment.

[22] The Claimant is awarded costs to be agreed or taxed.

Jacqueline A.R. Cornelius
Judge of the High Court