

CIRCULATE 22.3.2004

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 772of2003



BETWEEN:

JANICE KLOTZ

Plaintiff

AND:

GRANVILLE WILLIAMS

Defendant

Before: Hon. Madame Justice Priya Levers

Appearances:

Counsel for the Plaintiff: Ms. L. Hatfield of Solomon Harris

Counsel for the Defendant: Mr. R. Jones of Ritch & Conolly

Date of hearing: 19th March, 2004



JUDGMENT

Lever J.

This is an application for an interim payment. The Plaintiff it is alleged suffered injuries as a result of the Defendant's negligent driving on the 19th March, 2002. A defence has been filed in which liability is not admitted.

An order for an interim payment is an order requiring a defendant to pay the plaintiff a sum on account of any damages, debt or other monetary claim which the defendant may be ordered to pay if final judgment is given

in favour of the plaintiff. The underlying purpose of the procedure is to mitigate the hardship or prejudice to the plaintiff with a strong claim which may exist during the period between commencement of the action and trial.

The authorities indicate that there are 3 questions to be considered on an application for an interim payment:

1. Are there grounds for making an order?
2. Should the Court exercise its discretion?
3. And what sum should be ordered?

Interim payments are governed by Orders 9, 10, and 11 of the Grand Court Rules.

This particular application falls squarely under Order 11 Rule 1(c) which provides that:

“If, on the hearing of an application under rule 10 in an action for damages, the Court is satisfied-

that if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the

respondent or, where there are two or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damage which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.”

Proving that the Plaintiff would obtain judgment is a fairly onerous. It requires the Court to be satisfied on the civil standard of proof that is on a balance of probabilities. The burden in my view is a high one as it requires the Court to be “satisfied”.

This particular defendant has advanced a defense, and has denied liability.

The evidence before me, and the supporting affidavit does little to advance the Plaintiff's claim. Sufficient details have not been provided as to the extent of the damage to vehicles, the manner in which the accident took place or even the point of impact to enable this Court to come to a finding. Ms. Hatfield for the plaintiff seemed to rely on the fact that the Defendant was convicted of careless driving. That fact and the bare evidence before me, alone is simply insufficient.

The Plaintiff claims loss of wages, medical expenses and household help in the amount of some \$60,000CI. In support of household expenses there is no documentary evidence.

As far as the loss of wages is concerned, this Court views with some suspicion this claim. It transpires that the Plaintiff's husband was Director of this family owned company which terminated the Plaintiff after some 21 years of service within a very short time of the accident, not knowing of the final prognosis of the Plaintiff's medical condition. Mr. Jones for the defendant, objects to the claim for loss of wages and help, but does not seem to oppose the claimed medical expenses.

It may well be that had this Court had sufficient material before it, it could come to the conclusion that the Plaintiff can establish its claim and will succeed to the necessary standard, but as presently presented, there is insufficient evidence before me. "Something more than a prima facie case is clearly required, but not proof beyond reasonable doubt. The burden is high, but it is a civil burden on the balance of probabilities not a criminal burden."

See *Sheason Lehman* [1987] 1 WLR 48 per Lloyd L.J.

As I have held that the Plaintiff has not produced sufficient evidence, to meet the required standard of proof, the application must fail in its entirety. Should however the Defendant wish to make payment of the medical expenses claimed, to which Mr. Jones appeared to have no objection, it follows that it may be done outside this application.

Costs of the application to the Defendant to be agreed or taxed.

Dated this 22 day of March, 2004



Madame Justice Priya Levers
Judge of the Grand Court

