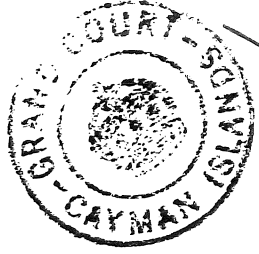


Undated



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 328 OF 1991

GEORGE MCLAUGHLIN v. JAMES MARCHADIE AND MIKES ICE

Mr. Murray for the Plaintiff  
Mr. Shea for the Defendants

JUDGMENT

SCHOEFIELD J.

Liability is admitted in this suit. Special damages have been agreed at \$130. I have to determine the amount of damages I should award for pain, suffering and loss of amenities.

The plaintiff is a 42 year old prisons officer who suffered injuries in a motor vehicle accident on the 4th October, 1989. On examination in the casualty department of George Town Hospital he complained of pain in the left knee and a headache. His knee had swelling and effusion but the ligaments were stable and there was no fracture to the knee. He was not admitted into hospital but was seen the next day when he complained of pain to the right ankle and leg on weightbearing, and pain on the left side of the neck and dysosthesis to the medial para-patellar region. An X-ray revealed a chip fracture to the anterior border of the tibia.

A medical report dated 14th March, 1990, from Dr. Newball an orthopaedic surgeon at George Town Hospital stated that it would be expected for the plaintiff to improve during the following three or four months but there was a possibility that the articular lesions would eventually enhance the appearance of degenerative arthritis.

The final diagnosis was:

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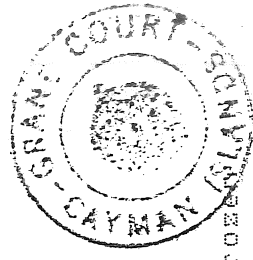
- (1) Post traumatic bursitis of left shoulder (frozen shoulder);
- (2) Grade I sprain of left knee;
- (3) Lesion of medial branch saphenous nerve - left knee;
- (4) Chip fracture anterior lip of tibia of the ankle.

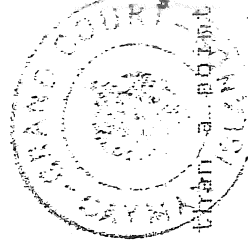
Dr. Newball provided a further report some 14 months later in which he stated that the injury to the left shoulder might need surgical treatment and the plaintiff will have to avoid, perhaps throughout his life, the lifting of heavy objects above his shoulder or the use of tools such as axes and heavy hammers.

A third report was submitted, from Dr. Sekhar an orthopaedic surgeon at George Town Hospital. This report shows that the plaintiff underwent physiotherapy for five months and the ankle and knee pains subsided. The shoulder pain got worse and the shoulder had to be manipulated under general anaesthesia on 23rd August, 1990. Subsequently the range of movements improved after continued physiotherapy. At the time of the report, 29th November, 1990, there was still some pain in the left shoulder. Full range of movement is possible with some pain at the extreme end of the external rotation. Dr. Sekhar's final comment was that there is not likely to be any permanent disability as a result of the accident.

The plaintiff testified that he used to jog every day but has had to give it up because swinging his arms is painful. He cannot do the exercises such as sit-ups and push-ups that he used to do. He does not now see the physiotherapist. His ankle gives him trouble every two or three months.

I have, of course, been referred to Kemp and Kemp, the English treatise on the Quantum of Damages. As I pointed out in Huddleston v. Hassan and another (cc 301 of 1988) authorities





from foreign jurisdictions can be used as no more than a pointer or guide to the kind of awards to be expected in this jurisdiction. It is inappropriate to follow foreign awards by merely undertaking an arithmetical calculation of currencies.

I have found three reports particularly helpful.

At paragraph 9-023 is the English case of Morris v Payne. A 69 year old man at the time of the trial in 1981 was awarded general damages of £1400, on receiving bruising to his left hip and right shoulder causing a "frozen shoulder" with pain in that shoulder and right side of the neck and limitation of flexion abduction in the shoulder. At the time of the trial he continued to suffer pain, was only able to lift the right arm just above the shoulder level and he found difficulty in using the arm for prolonged periods. He was unable to continue his previous hobbies of home decorating and gardening. Complete resolution of the pain and improved range of movement in the shoulder was expected within about six months.

At paragraph 9-024/1 is reported the case of Hamby v Mawdsley. A lady sustained a minor injury to her head, bruising and abrasions, and a main injury to her left shoulder. She was detained in hospital for 24 hours and was off work for two weeks initially she suffered considerable pain in her shoulder, a restriction in movement and a weakening of her left hand grip. Over the course of the next two years the pain diminished to a dull ache and she was expected to regain full movement of her arm within 2 1/2 years of the accident. In July, 1985 the English Court of Appeal upheld an award of £1750 for general damages but considered that award to be on the generous side.

The Scottish case of Calder v Lummus Crest Ltd is reported at paragraph 9-020 of Kemp and Kemp. A 49 year old crane driver sustained a frozen shoulder injury which produced continuing pain and discomfort. He was disabled from his former employment but




was fit, after about five years, for some form of light and substantially sedentary work. The award of damages under this head, in 1989, was \$3000.

The only Grand Court Case to which I have been referred is Powery v. Minzett (cc 190 of 1991) in which one of the plaintiffs complained of soreness and pain to the upper shoulders and neck. She had high blood pressure and anxiety following the accident from which she was expected to make a complete recovery. In a report written one month after the accident the plaintiff showed a restriction of movement in the cervical spine and splinting of the paravertebral musculature and upper right shoulder. This was a typical post-whiplash injury to the cervical spine and at the time of the report it was regarded as too early to make other than a guarded prognosis as to the final effects of the injury. Damages for pain and suffering were assessed at \$7,500. Of course it is difficult to compare those spinal injuries and nervous problems with the injuries in the present case.

In the present case I assess damages for pain suffering and loss of amenities at \$6,500. Interest is payable at Court rates.

Costs to the Plaintiff.



D. Schorfield

Dated this            day of            1992