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as provocative words of an extreme and exceptional character, and should have been left to the jury as evidence of provocation. We do not agree. The test propounded by Viscount SIMON contemplates words of a violently provocative character or the use of words in circumstances of an extreme and exceptional character. Accordingly, in considering whether the taunt in this case satisfied that test we must look at the whole of the circumstances objectively for the purpose of ascertaining what effect it would have on a reasonable man, and not for example on a man afflicted with want of balance, defective self-control, sexual inadequacy, or bitter feelings of jealousy. The reality of the matter in this case is that the appellant was supplanted by another man in the affection of the deceased. He was determined to resume his irregular relationship with her but he failed in his efforts. This provoked, if anything, bitter feelings of jealousy and resentment in the appellant. And the fact that he went to the home of the deceased with a knife concealed on his person and did what was in his mind, as he confessed soon afterwards to P.C. Lewis, clearly showed that his intention was to kill or inflict serious bodily injury on her if she spurned his pleas to return to him. In this setting it appears to us that the true effect of the taunt was to accentuate his jealousy and inspire him with the intention to kill. The type of wounds inflicted on her and the vulnerable areas to which they were directed were clearly demonstrative of that intention. And, as was so aptly said in *R.* v. *Gauthier* (5) (29 Cr. App. Rep. at p. 118), in circumstances nearly similar to the instant case, jealousy

> "is not an unknown motive for murder but motive is not provocation. A man may conjure upon a motive or reasons sufficient for himself to cause him to kill but it does not follow that that provides evidence of provocation and it only creates confusion if it is sought to establish provocation merely on a foundation of motive."

An alternative submission of counsel for the appellant was that the law as to provocation by words has been modified in this country since the enactment in the United Kingdom of the Homicide Act, 1957. In support of this contention he referred us to s. 2 of the Evidence Ordinance, Cap. 7, No. 9 [T.]. It is true that s. 3 of that Act has in fact modified the law as to provocation by words as settled in *Holmes* v. *D.P.P.* (*supra*), but the parliament of this country has not enacted similar legislation. As to s. 2 of the Evidence Ordinance [T.], it provides as follows:

> "Whenever any question shall arise in any action, suit, information, or other proceeding whatsoever in or before any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence touching the admissibility or the sufficiency of any evidence, or the competency or obligation of any witness to give evidence, or the swearing of any witness, or the form of oath or of affirmation to be used by any witness, or the admissibility of any question put to any witness, or the admissibility or sufficiency of any document, writing, matter, or thing tendered in evidence, every such question shall be decided according to the law of England for the time being in force."

It is sufficient to say that these provisions do not support the contention of counsel for the applicant since they deal with questions arising as to the admissibility or sufficiency of any document, writing, matter or thing tendered in evidence, the competency or obligation of any witness to give evidence and matters incidental thereto.

For these reasons we uphold the ruling of the trial judge that there was no evidence of provocation fit to be left to the jury, and consider that he acted quite properly in directing them that a verdict of manslaughter was not open to them. In this connection we think it appropriate to draw attention to the

danger of leaving the issue of manslaughter to a jury when there is no evidence to support it, and for this purpose we adopt what was stated by CASSELS, J., in *R.* v. *Gauthier* (*supra*) at p. 119:

> "A jury cannot return a verdict of manslaughter except upon the evidence. If there is no evidence and a judge leaves the issue of manslaughter to a jury then there is a real danger that a jury may, for reasons of sympathy with the accused person or disapproval of the conduct of the deceased person, adopt a soft option available and evade their duty, which is to return a true verdict according to the evidence, by returning a lesser verdict which there is not a shadow of evidence to support. There was here no evidence upon which the jury could reasonably have brought in a verdict of manslaughter; on the contrary, the evidence was all the other way."

The appeal is therefore dismissed and the conviction and sentence are affirmed.

Appeal dismissed.

CORNILLIAC *v.* ST. LOUIS

[COURT OF APPEAL OF TRINIDAD AND TOBAGO (Wooding, C.J., McShine and Hyatali, JJ.A.), January 11, 1965]

Damages—General damages—Personal injuries—Award so inordinately low as to be a wholly erroneous estimate of damage sustained—Matters to be taken into account in assessing general damages for personal injuries.

Pleading and Practice—Claim for general damages for personal injuries—No averment in statement of claim specifying loss of pecuniary prospects—Whether plaintiff debarred from claiming damages therefor.

In consequence of the negligent driving of a motor vehicle by the respondent, the appellant sustained a compound, comminuted, complicated fracture of the right humerus in the middle of the shaft and a fracture of the upper end of the radius and the ulna at the right elbow joint. Throughout his stay at a nursing home for twelve days after the accident he suffered intense pain and for eighteen months thereafter he continued to suffer pain but in diminishing intensity over this period. The fractures eventually healed but the range of movement of his hand was limited to 20°. In addition, arthritis had set in, it was likely to get worse and he was no longer able to play the musical instruments (piano and saxophone) he was fond of playing.

At the time of the accident on November 16, 1958, he was 48 years of age, earned a salary of $865 per month as assistant to the superintendent in charge of the cementing operations of a company, and was being groomed to take over the superintendent's job whose contract was about to expire. But for his disability resulting from the accident, the appellant would have been promoted to that job which carried a salary of $1,250 per month with the perquisites of a company-supplied home and car. Instead his junior got the job and his employers, who esteemed him greatly, put him in charge of their bulk cement plant at a salary of $1,050 per month which, it was stated, was more than the job was worth.

A judge awarded him $7,500 general damages and $1,035.80 special damages. On appeal against the inadequacy of the general damages awarded the appellant maintained that they were a wholly unrealistic estimate of the damage sustained by him. The respondent contended, *inter alia*, that it was not open on the pleadings for any regard to be had to the appellant's loss of pecuniary prospects

since he had made no averment therein specifying his occupation, his pecuniary prospects and the extent to which they had been affected.

Held: (i) no such averment was necessary since the loss of pecuniary prospects was not an item of special damage but one of the class of items to be taken into account in the assessment of general damages. *Dictum* of Lord GODDARD in *British Transport Commission* v. *Gourley* (1956), A.C. 185 at p. 206, applied;

(ii) the considerations which ought properly to have been borne in mind in assessing the general damages were (a) the nature and extent of the injuries sustained; (b) the nature and gravity of the resulting physical disability; (c) pain and suffering; (d) loss of amenities; (e) the extent to which pecuniary prospects were affected;

(iii) the sum awarded as general damages was a wholly unrealistic estimate of the damage sustained by the appellant and ought to be increased to $21,000.

Appeal allowed.

Cases referred to:

(1) *Taylor* v. *Southampton Corporation*, KEMP AND KEMP ON DAMAGES, Vol. I, p. 640.

(2) *British Transport Commission* v. *Gourley*, [1955] 3 All E.R. 796; [1956] A.C. 185; [1956] 2 W.L.R. 41; 220 L.T. 354; 100 Sol. Jo. 12; [1955] 2 Lloyd's Rep. 475; [1955] T.R. 303; 34 A.T.C. 305, 49.

Appeal by Victor Cornilliac against the *quantum* of general damages awarded to him by GEORGES, J., in an action against the respondent Griffith St. Louis for damages caused by his negligent driving of a motor vehicle on November 16, 1958. The facts are stated in the judgment of WOODING, C.J.

Cur. adv. vult.

WOODING, C.J.: This is an appeal on a question of damages. The appellant was a victim of a motor vehicle accident on November 16, 1958, and was awarded $8,535.80 as compensation for the injuries, loss and expense which he thereby incurred. This sum included $1,035.80 being the whole of the special damage claimed. In effect, therefore, the appeal is against the assessment at $7,500 of the general damages allowed. This assessment, the appellant contends, was wholly inadequate.

It is common ground that, in order to succeed, the appellant must show that the amount awarded was so inordinately low as to be a wholly erroneous estimate of the damage sustained. It is essential, therefore, to recapitulate the several considerations which the learned judge had to bear in mind when making his assessment. I think they were accurately summarised by the respondent's counsel substantially as follows: (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering which had to be endured; (iv) the loss of amenities suffered; and (v) the extent to which, consequentially, the appellant's pecuniary prospects have been materially affected. I shall set out the relevant facts separately under each head.

The nature and extent of the injuries sustained: The appellant was occasioned a compound, comminuted, complicated fracture of the humerus in the middle of the shaft and a fracture of the upper end of the radius and the ulna at the elbow joint. By "complicated" is meant that the fracture involved the elbow and the radial nerve and artery. He also suffered from shock and haemorrhage. The injuries were so extensive that at first it was feared that his right arm would have to be amputated, but this was avoided, happily, by the skilful administrations of his surgeon.

The nature and gravity of the resulting physical disability: The fractures have healed but with a residuum of deformity. There is considerable limitation of movement of the joint which in the course of time worsened because of new

bone formation from the healing of the fracture. Its present range of movement is no more than about 20°, so that the appellant is unable to touch his face, and therefore to shave or feed himself or discharge any ordinary functions involving a range of movement with his right hand, and in addition the hand has lost some of its grip. Arthritis, too, has resulted: it already is major and is likely to become worse.

The pain and suffering endured: The appellant experienced intense pain throughout his stay in a nursing home for the twelve days immediately following the accident. It was so intense that he had to be given sedatives. At one time the plaster cast in which the arm was placed after the bones had been set had to be opened up because the pain in the limb had become intolerable. During the whole of the period until the nerves healed, which the surgeon reckoned to be anything between nine and eighteen months, he was subjected to a great deal of pain—diminishing in intensity, it is true, but nevertheless always perceptibly there.

The loss of amenities suffered: The appellant had been an active, physically fit, outgoing man who was 48 years old at the time of the accident. He used to enjoy playing music, mainly jazz and calypso, on both the saxophone and the piano and was full of the zest of a more than ordinarily successful life. He can no longer play. And his outdoor activities must necessarily now be limited. For him, therefore, much of the fun and sparkle has gone from living.

The effect on pecuniary prospects: At the time of the accident the appellant was assistant to the superintendent in charge of the cementing operations of Halliburton Tucker Ltd. and was paid a salary of $865 per month. He was also given a bonus, probably (as is customary in this country) at the end of each year. He was being groomed to take over the superintendency when the contract of its expatriate holder came to an end, and it is practically certain that but for the disabilities which he has been occasioned he would now have been filling that berth. This is confirmed by the fact that a junior whom he had assisted in training was promoted to be superintendent when the contract of the expatriate ended in 1962. As the normal age of retirement was 60 years, it seems clear that the appellant lost the prospect of being for eight years in that post, which carries a salary of $1,250 per month with the perquisites of a company-supplied home and car. Instead, his employers who appear to esteem him greatly have put him in charge of their bulk cement plant and pay him an all-in total of $1,050 per month. In my estimation, the difference between the emoluments of the two posts exceeds $500 per month. But that is not all.

As the learned judge rightly said, the appellant's loss is long-term as well. His pension entitlements under his employers' contributory pension scheme will now be less than if he had been promoted to the superintendency to which he had so confidently looked forward. No particulars were given in evidence whereby any reasonable estimate can be made of this prospective loss. Also worth mentioning, although its calculable value may be negligible, is the fact that through the generosity of his employers he is being paid more than his present job is worth, so that the chances of an increase in pay for the remaining period of his service must be rated lower than if he had not been disabled and had secured the expected promotion.

Having recapitulated the several matters which the learned judge had to (and it should be added, which he did) take into consideration, I find myself involuntarily echoing DENNING, L.J.'s, exclamation: "Good gracious me, as low as ($7,500) for these injuries!"—see *Taylor* v. *Southampton Corporation* (1), reported in KEMP AND KEMP ON DAMAGES (2nd Edn.), Vol. I at p. 640. It certainly seems to me that that sum is a wholly unrealistic estimate of the damage sustained. However, before examining the matter further, I should deal with the submission for the respondent that it is not open on the pleadings for any regard to be had to the appellant's loss of pecuniary prospects.

I agree that there is no averment in the statement of claim specifying what the appellant's occupation was, what his pecuniary prospects were or in what way or to what extent they were alleged to have been affected. But, as I conceive it, no such averment was necessary unless the claim for loss of pecuniary prospects was one for special damage which, in my opinion, it was not. In my view, it was but one of the class of items to be taken into account in the assessment of general damages and was very closely akin to the claim for loss of amenities. The answer, then, to the submission is to be found, I think, in the following passage from Lord GODDARD's judgment in *British Transport Commission* v. *Gourley* (2), ([1956] A.C. at p. 206):

> "In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damages, which has to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of the trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future."

But, even on a contrary view of the classification of the claim for loss of pecuniary prospects, I would reject the submission at this stage. Not only was no objection taken when the evidence was being led to establish the loss, but both the appellant and his witness, the secretary-accountant of Halliburton Tucker Ltd., were cross-examined at some length upon it. There was no suggestion whatever that the respondent's advisers were taken by surprise. On the contrary, the matter was fully agitated. Accordingly, since the evidence was relevant to the issue of damages and no new cause of action (which would have been statute-barred) was being introduced thereby, justice would, I think, have demanded that the appellant be allowed to amend, if amendment was considered to be necessary, upon such terms (if any) as the circumstances of the case might warrant. It is too late, therefore, to raise any objection now.

I turn then to my own approach so as to arrive at a proper assessment of the general damages. As already adumbrated, the appellant is entitled to be compensated for (a) the injuries inflicted and the loss or impairment of his functional capacity before making such recovery as he has; (b) the physical disabilities which he will have to bear for the rest of his life; (c) the pain and suffering he had to endure; (d) the loss of the amenities of which he has been deprived; and (e) the loss of pecuniary prospects in respect both of his employment and of his retirement benefits. I am fully aware that it is not the practice to quantify the damages separately under each head or, at any rate, to disclose the build-up of the global award. But I do think it is important for making a right assessment that the several heads of damage should be kept firmly in mind and that there should be a conscious, even if undisclosed, quantification under each of them so as thereby to arrive at an appropriate final figure. I must not, however, be understood to mean that at the last count there should be a simple addition of a number of money sums. Any such arithmetical exercise would ignore the realities that are so often encountered. Frequently, the unit factors overlap so that the aggregate of the several amounts which might be allowable in respect of each would be an over-assessment of the total damage taking them all together. In the present case, for instance, the nature and extent of the injuries inflicted cannot be dissociated from the physical disabilities which are their permanent result, nor are they unrelated to the pain and suffering which have had to be endured. So, too, the physical disabilities which have become permanent are inextricably bound up with the loss both of amenities and of [illegible] With one exception therefore, I shall not disclose the

several amounts which I would attribute by way of compensation if the five heads of damage had to be considered separately and in isolation. Nevertheless, I shall so assess them for my own guidance.

The one exception I make is as regards the loss of pecuniary prospects. That was the subject of most debate and it is, I think, right that I should leave no one in doubt as to how I view the matter. Besides, that is a head of damage under which there can be no conformity with a scale of assessment which may be indifferently applied. The measure of the loss must inevitably depend upon the facts of each case. I repeat, then, that I regard it as morally certain that, but for his disablement, the appellant would have succeeded in 1962 to the superintendency to which he had confidently aspired. I have said also that I estimate the difference between the gross emoluments of that post and the one he now holds exceeds $500 per month. In the absence of precise figures, however, I shall treat the difference as being $500 per month. Starting from that datum figure, I allow for the impact which tax may be expected to make on incomes of that order. Then, multiplying what is left by the eight years before the appellant would have reached retirement age, I discount the result so as to give it a present capital value. But I must not stop there. Satisfied as I am that the appellant would have been promoted to the higher post, I cannot be certain that he would have remained in it until he attained age 60. Apart from the ordinary contingencies of life, none of which I should ignore, the evidence is that the duties of the superintendent are arduous, exacting, and not without serious physical risks. Anyone performing such duties must be, and continue at all times, absolutely fit physically and alert mentally. This I regard as an appreciable threat to a person of the age of the appellant. Taking into account all these contingencies, I must tax down the amount yet further. And I think I ought to do so quite significantly. I thus reach for loss of pecuniary prospects a compensation figure of $15,000. I wish, however, to make it plain that I do not propose that figure as being mathematically correct. I am assessing general, not computing special, damages. I am evaluating prospects, and the value at which I have arrived is a broad general estimate. Perhaps, I ought to add here also that I have not forgotten the possible long-term losses to which I referred earlier. But I doubt that any reasonable estimate can be made of their value on the evidence before us. Accordingly, I treat them as already accommodated within the $15,000 which I consider to be a broadly correct figure for the entire loss of pecuniary prospects. I must now place that assessment beside my estimates under the other heads and get thereby to my final award.

The injuries sustained by the appellant were undoubtedly serious and the cause of grave concern. His arthritic condition, already major, is likely to get worse. The limitation in the range of movement of his right arm is substantial and will not improve. The shock and haemorrhage resulting from his injuries cannot have been other than quite considerable. The pain he endured was both severe and prolonged. The loss of enjoyment through being disabled to play any music is permanent and will most probably provoke regrets. Taking all the relevant facts into consideration I would award for general damages the sum of $21,000. To that falls to be added $1,035.80 being the amount of the special damage.

Accordingly, I would allow the appeal and substitute for the $8,585.80 for which judgment was entered for the appellant the aggregate sum of $22,035.80. And I would allow the appellant his costs of the appeal.

McSHINE, J.A.: I agree.

HYATALI, J.A.: I also agree.

Appeal allowed.

Solicitors: *Fitzwilliam & Co.* (for the appellant); *G. Harper* (for the respondent).