



By order of the Court, JUDGMENT. Presiding Judge Robert C. Naraja

FOR PUBLICATION



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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

YUE FANG XIE DEMAPAN,

Plaintiff,

vs.

CRISPIN DAQUE BELTRAN and
FRANCISCO CABRERA,

Defendant.

CIVIL ACTION NO. 08-0163

JUDGMENT PURSUANT TO NMIR.
CIV. P. 55(b)(2)

I. INTRODUCTION

THIS MATTER came before the Court on July 29, 2009 at 9:00 a.m. on Plaintiff's Motion for Entry of Judgment. Yue Fang Xie Demapan ("Plaintiff") appeared with counsel of record Victorino Torres. Defendants Crispin Daque Beltran ("Beltran") and Francisco Cabrera ("Cabrera") (collectively, "Defendants") failed to appear.

II. DISCUSSION

Plaintiff brought suit against Defendants on May 2, 2008. Plaintiff filed her Petition for Entry of Default Judgment on January 30, 2009 pursuant to Rule 55(a) and (b)(2) of the Commonwealth Rules of Civil Procedure. At the March 25, 2009 hearing, Defendants failed to appear and thus the Court continued the matter with instruction that Plaintiff obtain a Clerk's entry of default for Defendants' failure to file any responsive pleading pursuant to Rule 55(a). Subsequently, Plaintiff's request for an Entry of Default was granted by the Superior Court Clerk of Court on April 27, 2009. Only Defendant Beltran was listed on the caption of the Court's Entry of Default.

1 At the hearing of June 3, 2009, the Court heard Plaintiff's request for an Entry of
2 Default Judgment pursuant to Rule 55(b)(2) of the Commonwealth Rules of Civil Procedure.
3 At the hearing, Plaintiff testified to the car accident and her resulting injuries. Plaintiff's
4 paycheck stubs, dental bills from New Wave Dental, Commonwealth Health Center (CHC)
5 Illness Certification slips, CIIC medicine prescriptions, PHI Pharmacy receipts, and pictures of
6 Plaintiff's injuries were also taken into evidence and submitted as exhibits with Plaintiff's
7 memorandum.

8 At the end of the hearing, the Court made it clear that it was inclined to enter a
9 judgment for \$3,157.74 for loss of income and \$1,448.34 for medical expenses. The Court,
10 however, declined to certify Plaintiff's other damages requests unless additional evidence was
11 presented to support its requests for \$10,000 for future medical expenses and \$100,000 in non-
12 economic damages for pain and suffering, diminished quality of life, emotional distress, mental
13 anguish and suffering a lifelong injury. Plaintiff took the position that Plaintiff's recitation of
14 these damages was sufficient to justify an award, and thus it need not offer supporting evidence
15 of the same. At the same time, however, Plaintiff acknowledged that a "plaintiff is required to
16 prove [unliquidated damages] by presenting evidence to the court despite the defendant's
17 default." (Mem. of law. in Supp. of Default J. Against Def. at 3) (citing *Sunrizon Homes, Inc.*
18 *v. Fuller*, 747 S.W.2d 530, 533 (Tex. App. 1988)). The Court then continued the matter with
19 respect to the remaining damages and ordered Plaintiff to offer evidence in support thereof.

20 At the July 29, 2009 hearing, Plaintiff did not offer additional evidence to support the
21 remaining damages sought; rather, the issues were submitted based on the memorandum of
22 law. The Court took the matter under advisement.

23 Plaintiff filed, on January 12, 2010, a First Amended Complaint without notice to the
24 Court, without a request for leave of Court to file an Amended Complaint, and without request
25 to stay the matter taken under advisement. As far as this Court is concerned, after Plaintiff
26 received the NMI R Civ. P. 55(a) and (b)(1) Entry of Default, the only remaining matter in this
27 case was whether to certify the amount of damages for \$10,000 for future medical expenses
28

1 and \$100,000 in non-economic damages for pain and suffering, diminished quality of life.
2 emotional distress, mental anguish and suffering a lifelong injury.

3 **A. FUTURE MEDICAL EXPENSES**

4 "To collect for future medical expenses, plaintiffs must prove: that there is a reasonable
5 probability that they will incur future medical expenses, and; they must prove the amount of
6 those damages with reasonable certainty." *Priest v Lowery*, Civ. No. 04-0233A (NMI Super.
7 Ct. May 17, 2007) (unpublished) (Findings of Fact and Conclusions of Law at 14) (citing
8 *Sherbahn v. Kerkove*, 987 P.2d 195, 198 (Alaska 1999)). The only evidence that Plaintiff
9 presented with respect to future medical expenses was her own testimony that her doctor
10 informed her that she would incur future medical and dental expenses. Such evidence alone is
11 insufficient to prove the amount of damages with reasonable certainty as required for any
12 recovery. *Id.* at 9 (holding that the plaintiff failed to adequately prove damages for future
13 medical expenses by simply testifying that she was advised by her doctor to seek surgical relief
14 in the future for her pain). Therefore, Plaintiff is entitled to no relief for future medical
15 expenses.

16 **B. PAIN AND SUFFERING**

17 "Pain and Suffering may be inferred from evidence of the nature, extent, severity and
18 treatment of the injuries." *Id.* at 14 (citations omitted). "For this type of damages sought, no
19 special proof need be introduced at the hearing. The plaintiff only needs to show that there
20 was an injury from which she has experienced pain and suffering." *Arugay v. Camacho*, Civ.
21 No. 09-0116A (NMI Super. Ct. Nov. 3, 2011) (unpublished) (Findings of Fact and Conclusions
22 of Law at 3). In *Arugay*, the plaintiff provided testimony as to her specific level of pain for
23 specific durations of time, allowing the court to calculate a formula for the damages. *Id.* at 3-4
24 (awarding the plaintiff damages for pain and suffering in the amount of \$50.00 per hour for the
25 first seven days during which the pain was severe and \$25.00 per day for the subsequent
26 fourteen days when the pain was milder). The instant case, however, is utterly bereft of any
27 evidence as to the degree or duration of the pain and suffering experienced by Plaintiff. The
28 Court cannot, therefore, make any logical formulaic or "per diem" calculation of damages;

1 rather, the Court will consider the nature of the injuries, photographs submitted into evidence,
2 and the amount of damages other jurisdictions have awarded plaintiffs with similar injuries.

3 The photographs of Plaintiff's injuries, submitted into evidence as Exhibit B, depict a
4 scar on Plaintiff's upper lip and extensive damage to her teeth. Plaintiff claims that she
5 suffered severe pain, embarrassment, and difficulty in eating due to her injuries. These claims
6 are substantiated by the photographs and medical reports submitted into evidence, entitling
7 Plaintiff to damages for pain and suffering. The far more difficult task for the Court is
8 determining an appropriate sum of money to compensate Plaintiff for her pain and suffering.

9 In *Kansas City S. R. Co. v. Leatherwood*, the plaintiff was similarly injured when his
10 face smashed against the steering wheel in a car accident. 519 S.W.2d 533, 535 (Tex. App.
11 1975). There, the plaintiff had one tooth completely knocked out and three other teeth
12 fractured, causing him to have difficulty in eating. *Id.* He also incurred a scar on his lip that
13 remained well after the accident, which was embarrassing and burdensome for the plaintiff. *Id.*
14 The trial court's judgment of \$15,000 for physical pain and mental anguish, past and future,
15 was affirmed. *Id.*

16 The general case law supports an award ranging between \$3,000 and \$15,000 for pain
17 and suffering based on injuries similar to those injuries sustained by Plaintiff.¹ In light of the
18 case law and the Court's review of the evidence, albeit limited, the Court determines that a
19 reasonable sum of money to compensate Plaintiff for her pain and suffering is \$15,000.00.

20 C. DIMINISHED QUALITY OF LIFE

21 Damages in a personal injury case may include compensation for "physical disability
22 which limits the plaintiff's capacity to share in the 'amenities of life,' or 'loss of enjoyment of
23 life.'" *Priest v. Lowery*, Civ. No. 04-0233A (NMI Super. Ct. May 17, 2007) (unpublished)

25 ¹ *Williams v. Bambauer*, 325 F. Supp. 716 (N.D. Miss. 1971) (awarding plaintiff \$12,000 for physical pain and
26 suffering for a fractured right jaw, immobility of teeth and difficulty in eating); *Valenti v. Courtney*, 206 So. 2d
27 579 (La. Ct. App. 1968) (awarding plaintiff \$3,500 for pain and suffering caused by injuries to her teeth when her
28 mouth hit the steering wheel of her automobile in a car accident); *Estes v. Hartford Accident and Indemnity Co.*,
187 So. 2d 149 (La. Ct. App. 1966) (awarding plaintiff \$10,000 for injuries sustained to her chin, mouth and
teeth); *Nichols v. Snyder*, 78 N.W.2d 836 (Iowa 1956) (awarding plaintiff \$5,000 in pain and suffering for two
broken teeth and other injuries); *Roland v. Murray*, 239 S.W.2d 967 (Ky. Ct. App. 1951) (awarding plaintiff
\$3,000 for pain and suffering caused from facial and dental injuries sustained in a car accident).

1 (Findings of Fact and Conclusions of Law at 16) (citing *Huff v. Tracy*, 57 Cal. App. 3d 939,
2 943 (Cal. Ct. App. 1976)). For instance, in *Priest*, the court awarded the plaintiff damages for
3 diminished quality of life based on evidence that the plaintiff could no longer enjoy “walking,
4 jogging, dancing, exercising at a gym, and having marital sexual relations” as a result of her
5 injuries. *Id.* at 9. Here, Plaintiff did not allege her injuries have prevented her from enjoying
6 her usual activities or altered her life in any manner. Plaintiff merely offered a conclusory
7 statement that she has suffered a diminished quality of life without any factual support.
8 Plaintiff failed to allege damages for diminished quality of life to a reasonable degree of
9 certainty, and thus, is entitled to no such damages.

10 **D. EMOTIONAL DISTRESS, MENTAL ANGUISH, AND LIFELONG INJURY**

11 Lastly, Plaintiff seeks non-economic damages for emotional distress, mental anguish,
12 and lifelong injury. These are recognizable injuries in the CNMI that are legally compensable.
13 *Id.* at 14-16. But, like all damages, they must be proven with a reasonable degree of certainty.
14 *Id.* Here, Plaintiff again made only conclusory statements of damages for emotional distress,
15 mental anguish, and lifelong injury, despite the Court’s demands to provide some sort of basis
16 or support for the relief sought. The Court declines to award any damages for emotional
17 distress, mental anguish, or lifelong injury due to the lack of any sound basis upon which to
18 calculate or assess the alleged damages.

19 **III. CONCLUSION**

20 For the reasons set forth above, the Court now **ENTERS** a Rule 55(b)(2)
21 **Default Judgment** in this case for \$3,157.74 for loss of income and \$1,448.34 for medical
22 expenses, and \$15,000 for pain and suffering, past and present, for a total Default Judgment of
23 \$19,606.08 against Defendant Beltran.

24
25 **IT IS SO ORDERED** this 23rd day of February, 2012.

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28 _____
/s/
ROBERT C. NARAJA, Presiding Judge