

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

**SKBHCV2020/0102
Formerly SKBHCV2018/0164**

BETWEEN:

JENNIFER ARCHIBALD

Claimant

and

ST. KITTS NEVIS ANGUILLA TRADING AND DEVELOPMENT COMPANY LIMITED

Defendant

Appearances:

Mrs. Sherry-Ann Liburd-Charles for the Claimant

Mr. Damian Kelsick KC with him Ms. Hadya Dolphin for the Defendant

2026: January 29;
March 31.

JUDGMENT ON REASSESSMENT OF DAMAGES

- [1] **GILL J:** This is a reassessment of damages as ordered by the Court of Appeal for adjudication by a different judge of the High Court.

Background

- [2] The claimant, Jennifer Archibald, instituted proceedings in negligence and occupier's liability against the defendant, St. Kitts Nevis Anguilla Trading and Development Company Limited, arising out of personal injuries sustained as a result of a slip and fall in the defendant's parking lot on 21st December 2016.

- [3] Following trial of the matter, on 10th March 2022, the learned trial judge delivered judgment in favour of the claimant,¹ awarding damages under several heads of special damages and general damages, including loss of earnings.
- [4] On 12th April 2022, the defendant filed a notice of appeal challenging the judgment. On 6th May 2022, the claimant filed a counter notice of appeal challenging the learned trial judge's award on certain heads of damages only.
- [5] On 1st October 2025, the Court of Appeal dismissed the defendant's appeal, allowed the claimant's cross appeal, and ordered that the matter be remitted for reassessment of damages for loss of earnings before another judge of the High Court.² Pursuant to that order, the matter falls before this court for reassessment.
- [6] Both parties filed written submissions (pre and post hearing) in addition to making oral arguments in court.

Claimant's submissions

- [7] The claimant succeeded on three parts of the judgment of the learned trial judge and has broken down those parts into the following categories:
- i. Loss of past earnings up to trial;
 - ii. Loss of income from ages 50 – 55 (future loss of earnings); and
 - iii. Future loss of pension income.
- [8] The claimant submits that the reassessment is not a fresh trial, as argued by the defendant, but must follow the binding principles laid down by the Court of Appeal.

Past loss of earnings

- [9] At the Court of Appeal, the claimant contended that the learned trial judge erred in awarding loss of income (special damages) up to the date of retirement and not the date of trial.³ The Court of Appeal stated that it was wrong for the learned trial judge to cut off the award of loss of earnings at the date of the claimant's retirement and

¹SKBHCV2020/0102, delivered 10th March 2022

² SKBHCVAP2022/0003

³ Paras. 60-61 of the trial judgment

ruled that the claimant's entitlement was up to the date of trial, and not the date of retirement. The claimant calculates a total of EC\$258,461.71 in damages for loss of income up to trial, consistent with the Court of Appeal's guidance.⁴

Future loss of earnings

[10] The claimant emphasises that the learned trial judge failed to make any award for the period between ages 50 and 55. He calculated the claimant's monthly loss of earnings to be EC\$5,116.17. The Court of Appeal stated that it was wrong for the learned trial judge not to make an award to the claimant under this head and calculated the loss as EC\$5,116.17 per month for 60 months, resulting in a total of EC\$307,006.20 for the period between ages 50 and 55.⁵

[11] The claimant disputes the defendant's assertion that there was a finding of fact by the learned trial judge that the claimant intended to retire before the age of 55, and contends that no such finding was made on the face of the trial judgment.

Future loss of pension income

[12] The learned trial judge applied a multiplier of 5 years and awarded \$EC\$87,778.45 for future loss of pension income.⁶ The claimant highlights the Court of Appeal's substitution of a 15-year multiplier as being more reasonable in the circumstances,⁷ yielding EC\$263,335.35, in place of the learned trial judge's 5-year award.

[13] The claimant further submits that the defendant's calculations (below) fail to include the annual pension loss of \$58,519.06 awarded by the learned trial judge, and improperly conflate gratuity and pension earnings, contrary to the Court of Appeal's clear guidance.

[14] The claimant therefore invites the court to adopt the following assessment:

- Special damages: EC\$462,376.06

⁴ Paras. 105-107 of the appellate judgment

⁵ Para. 103 of the appellate judgment

⁶ Para. 64 of the trial judgment

⁷ Para. 102 of the appellate judgment

- General damages for pain and suffering and loss of amenities - EC\$65,000.00
- Future loss of pension - EC\$263,335.35
- Future loss of earnings - EC\$307,006.20

This gives a total of EC\$1,097,717.61, exclusive of interest and costs. With interest at 2.5% on special damages, the claimant seeks judgment in the sum of EC\$1,141,453.31, together with interest at 5% until payment in full, prescribed costs under Part 65 of the Civil Procedure Rules and deduction of EC\$93,060.00 already paid.

Defendant's submissions

- [15] The defendant submits that the court is called upon to conduct a reassessment of damages, not a mere recalculation. The reassessment must be grounded in the factual findings of the learned trial judge, particularly the claimant's intended retirement date of 23rd September 2020, which was accepted as a finding of fact.⁸ The defendant emphasises that this finding was based on the claimant's own witness statement (para. 21), where she stated, "The full pension referred to in this document is had I voluntarily retired as at 1st September 2018, as opposed to **my intended retirement date of 23rd September 2020.**" (*Emphasis added*)
- [16] The defendant argues that the learned trial judge's award for loss of gratuity of EC\$87,776.35 was premised on this intended retirement date, and that the claimant herself indicated she intended to retire at age 49. Accordingly, the defendant submits that the Court of Appeal erred when it stated, "There is nothing to suggest that she would have voluntarily retired earlier than age 55."⁹ The defendant contends that the Court of Appeal was not entitled to contradict findings of fact that were not appealed, and that this court, on reassessment, cannot make any award inconsistent with the learned trial judge's finding.

⁸ Para. 60 of the trial judgment

⁹ Para. 104 of the appellate judgment

Loss of earnings

[17] The defendant calculates the claimant's loss of income in four periods:

- **Period 1 (1st Oct 2017 – 1st Sep 2018):** During this period (comprising 336 days), the claimant received EC\$3,093.73 which was EC\$5,116.77 less than her net salary of EC\$8,210.50. The loss of income for this period is calculated at EC\$56,354.56.
- **Period 2 (2nd Sep 2018 – 23rd Sep 2020):** At the commencement of this period (comprising 752 days) following retirement, the claimant received a pension of EC\$2,434.03 per month. The end of the period is taken as the date on which the claimant would have retired had she not been injured.¹⁰ She would have anticipated earning a net salary of EC\$8,210.73. The monthly loss of EC\$5,776.70 (\$189.92 per day) yields a total of EC\$142,813.35.
- **Period 3 (24th Sep 2020 – 23rd Mar 2022):** From the anticipated retirement date to trial, the claimant's expected pension would have been EC\$46,763.64 per annum, compared to the actual pension she received of EC\$29,208.35. The loss is the difference of EC\$17,555.29 per annum equating to EC\$25,587.44 over 532 days.
- **Period 4 (Post-trial):** For future loss, the defendant applies the multiplier/multiplicand method, using the difference between the anticipated pension (EC\$46,763.64) and the actual pension (EC\$29,208.35), that is, EC\$17,555.29 multiplied by 15 years, yielding EC\$263,329.35.

Periods 1 to 3 are treated as special damages amounting to EC\$224,755.35 and Period 4 is treated as general damages, EC\$263,329.35.

[18] The defendant stresses that at the date of trial the claimant was already retired, and therefore the multiplicand must be the difference between the two pensions. To award damages on the basis that the claimant was both retired and not retired would

¹⁰ Para. 60 of the trial judgment

result in double recovery. She would be awarded two future losses for the same period.

[19] The defendant submits that the total loss of income is EC\$488,084.70. The reassessed order should therefore be (exclusive of post judgment interest):

- General damages for pain, suffering and loss of amenities: EC\$65,000.00
- Special damages for medical care: EC\$37,926.16
- Travel expenses: EC\$19,692.78
- Loss of gratuity: EC\$87,776.35
- Loss of income to date of trial: EC\$224,755.35
- Loss of future earnings: EC\$263,329.35
- Interest on special damages (29th May 2018 – 10th March 2022): EC\$35,012.19

Total: EC\$733,492.18

[20] The defendant further submits that prescribed costs on this sum is to be calculated under the Civil Procedure Rules in effect at the date of the award, that is, the Civil Procedure Rules 2000, amounting to EC\$75,094.45.

Issues

[21] The issues for determination on this reassessment are:

- 1) whether damages for past loss of earnings should be calculated up to the date of trial, or limited to the claimant's intended retirement date of 23rd September 2020;
- 2) whether the claimant is entitled to future loss of earnings for the period between ages 50 and 55, applying the multiplier/multiplicand method.
- 3) the award for future loss of pension income, considering the defendant's concern about double recovery.

Analysis

- [22] The evidence of the claimant at trial revealed that her intended retirement date was 23rd September 2020, and the learned trial judge's calculation of the award for loss of gratuity of \$87,776.35, represented "the difference between the gratuity she received and that which she would have received had she retired on the anticipated date". I accept the claimant's submission that this award was premised on the claimant's evidence that she intended to retire on 23rd September 2020, which the trial judge clearly accepted. Therefore, in my view, it is reasonable to conclude that the learned trial judge found as a fact that the claimant intended to retire on 23rd September 2020.
- [23] The reassessment requires careful consideration of (i) respect for the factual findings of the trial judge, and (ii) obedience to the binding directions of the Court of Appeal. The claimant's position is that the Court of Appeal has already settled the relevant methodology and consequential calculations, leaving this court primarily to implement those determinations. The defendant, however, urges the court to conduct a reassessment anchored in the trial judge's findings, in particular, on the intended retirement date, and insists that the trial judge's unappealed finding of an intended retirement date of 23rd September 2020 must govern.

Past Loss of Earnings

- [24] The trial judge limited the claimant's entitlement as per the claimant's evidence of the intended retirement date of 23rd September 2020. The Court of Appeal, however, held that this was an error and directed that damages be calculated up to the date of trial. At paragraph 107 of the appellate judgment, Price Findlay JA (as she then was) stated:

"The respondent seeks compensation for the difference in earnings from October 2018 to August 2021, a 35-month period, amounting to EC\$179,086.95. This sum reflects the difference between the respondent's pre-injury salary and the pension she subsequently recovered, and I am satisfied that it is properly recoverable as special damages. This position is consistent with the approach endorsed in **Steadroy Matthews v Garna**

O’Neal,¹¹ which emphasizes that special damages must be specifically pleaded and strictly proved. The respondent has met that threshold.”

[25] Further, at paragraph 109, Her Ladyship declared:

“Accordingly, the respondent should be entitled to the net difference between her pre-injury salary and her post-retirement income, up to the date of trial. The judge’s failure to account for this loss in full was an error of law and of assessment.”

[26] The claimant’s recalculation of EC\$258,461.71 accords with the Court of Appeal’s directive. This court is bound to apply the appellate ruling, and therefore the claimant’s figure must be preferred.

Future Loss of Earnings

[27] The learned trial judge made no award for the period between ages 50 and 55, despite accepting the monthly loss figure. The Court of Appeal corrected this omission, expressly endorsing the multiplier/multiplicand method and awarding damages for that period. Paragraphs 103 and 104 of the appellate judgment read as follows:

“In terms of loss of future earnings, the respondent submitted that her loss of earnings from age 50 to at least age 55 which is the age of retirement from Government, represented the period in which she would have continued to be in salaried employment with the government. This loss is calculated as EC\$5,116.17 per month for 60 months, yielding a total of EC\$307,006.20.

In **Irani v Duchon**,¹² the court reaffirmed the use of the multiplier/multiplicand method to assess future loss of earnings. Under this approach, the multiplicand represented the claimant’s net earnings “but for” the injury, while the multiplier corresponds to the duration over which the loss is expected to continue. In my view, the respondent’s case falls squarely into this. There is nothing to suggest that she would have voluntarily retired earlier than age 55. Therefore, the learned judge erred in his assessment of the respondent’s loss of future earnings, which ought to have been calculated using the multiplier/multiplicand method. In this case, that approach would have more accurately reflected the loss incurred by the respondent as a result of her premature retirement.”

¹¹ BVIHCVAP2015/0019, delivered January 16, 2018

¹² [2019] EWCA Civ 1846

[28] The claimant's figure of EC\$307,006.20 reflects this methodology. The defendant's submissions disregard the directive of the Court of Appeal, focussing instead on the claimant's retirement status at the date of trial. That approach would effectively nullify the Court of Appeal's directive. The defendant's omission of this head of damages is inconsistent with the Court of Appeal's judgment. This court cannot disregard the directive of the Court of Appeal and must adopt the claimant's figure.

[29] The defendant submits to this court that the Court of Appeal erred in suggesting that the claimant would not have retired before age 55, and that this pronouncement contradicted the learned trial judge's factual finding. While ordinarily findings of fact not appealed are binding, the Court of Appeal expressly addressed retirement age and extended entitlement to 55. That pronouncement is binding on this court. The reassessment does not avail this court the opportunity to revisit or correct the Court of Appeal's reasoning, but to give effect to its directions.

Future loss of pension

[30] The learned trial judge applied a 5-year multiplier, yielding EC\$87,778.35. The Court of Appeal substituted a 15-year multiplier, producing EC\$263,335.35. The claimant's submissions align with this guidance. The defendant's calculation of EC\$263,329.35 is effectively identical, save for a minor discrepancy, and does not materially alter the outcome. The appellate court's figure must be applied.

Risk of double recovery

[31] The defendant contends that awarding damages on the basis that the claimant was both retired and not retired results in duplication. The appellate court has reconciled this tension by distinguishing between past loss (to trial) and future loss (post-trial), and by directing the use of the multiplier/multiplicand method. At paragraph 106 of the appellate judgment, the Court of Appeal stated:

"The learned trial judge further erred by factoring into account a gratuity payment as a substitute for earnings, without accounting for the significant shortfall in her actual income."

[32] At paragraph 108, the Court continued:

“The respondent further asserts that pension and social security payments should be treated as partial mitigation of income loss, rather than as complete substitutes. This aligns with the reasoning in **Halsbury’s**, which states that while certain benefits may be deducted (e.g., sick pay or employer-provided insurance), payments arising from separate entitlements, particularly those earned over a career (e.g., pensions), should not be used to reduce damages unless explicitly connected to the injury.”

[33] The claimant’s figures reflect distinct periods of loss and based on the position of the Court of Appeal, do not result in double recovery. In direct contradiction of the appellate judgment, the defendant factored in the claimant’s pension. The defendant’s concern, though understandable, is addressed by the Court of Appeal.

Conclusion

[34] The claimant’s submissions are therefore consistent with the Court of Appeal’s binding directions, while the defendant’s submissions, though grounded in the learned trial judge’s factual findings, are inconsistent with the appellate ruling. In these circumstances, the reassessment must adopt the claimant’s figures, subject to interest and costs.

Order

[35] For the reasons set out above, and in accordance with the binding directions of the Court of Appeal, I prefer the claimant’s submissions. The reassessment of damages is therefore determined as follows (*awards affected by the appeal in italics*):

Special damages

Cost of medical care	\$37,926.16
Travel expenses	\$19,692.78
<i>Loss of income (up to trial)</i>	<i>\$258,461.71</i>
Loss of gratuity payments	\$87,776.35
Loss annual pension	\$58,519.06
Total special damages	\$462,376.06

General damages

Pain and suffering and loss of amenities	\$65,000.00
<u>Loss of future earnings</u>	
<i>Loss of future earnings from age 50 to 55</i>	\$307,006.20
<i>Future loss of pension</i>	\$263,335.35
Total general damages	\$635,341.55

Total award excluding interest and costs	\$1,097,717.61
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Interest on special damages – 29th May 2018 to 10th March 2022	\$43,735.71
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Total award	\$1,141,453.31
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- [36] The defendant shall pay interest on the judgment sum at the rate of 5% from the date of judgment to the date of payment in full.
- [37] The defendant shall pay prescribed costs to the claimant in accordance with Part 65 of the CPR in the sum of \$97,993.60.
- [38] The sum of EC\$93,060.00 already paid by the defendant shall be deducted from the judgment sum.

Tamara Gill
High Court Judge

By the Court

Registrar