

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2021/0010

BETWEEN:

MONIQUE JAMES-ROBERTS

Claimant

and

1. ABI INSURANCE COMPANY LIMITED
2. REDCLIFFE HOLDINGS LIMITED

Defendants

Appearances:

Mr. Loy Weste, Mrs. Lisa John-Weste and Ms. Tiwana Martin for the Claimant
Ms. Kema Benjamin and Mr. Jonathan Marshall for the Defendants

2025: October 14th;
2026: March 11th.

DECISION ON ASSESSMENT OF DAMAGES

- [1] **MICHEL, M.:** This is an assessment of damages following a trial on liability on the Claimant's claim against the Defendants for damages for personal injury and loss pursuant to the law of occupier's liability.
- [2] The Claimant, Ms. Monique James-Roberts is an employee of the 1st Defendant Company, ABI Insurance Limited ("**ABI Insurance**"). She commenced her employment with ABI Insurance in or around 2016. ABI Insurance's offices are located in a leased office space in a building owned by the 2nd Defendant Company, Redcliffe Holdings Limited ("**Redcliffe Holdings**"). ABI Insurance is also the insurer of Redcliffe Holdings. Collectively, I shall refer to ABI Insurance and Redcliffe Holdings as ("**the Defendants**").
- [3] On 11th January, 2018 the Claimant was injured during the course of her duties with ABI Insurance when she stumbled as she disembarked from an elevator on the first-floor office of ABI Insurance located in Redcliffe Holdings' building. The Claimant subsequently commenced these proceedings against the Defendants seeking damages. The Claimant alleged in her claim that when the elevator came

to a stop on the first floor, it did not stop flush with the floor, creating a height of between 6" to 10" from the floor and that when she stepped out of the elevator, she stumbled, causing injury to her lower back and spine. I shall refer to this incident as ("**the Accident**").

[4] The Claimant alleged in her claim that the Accident was caused by the negligence and/or breach of duty on the part of the Defendants resulting in her sustaining personal injuries, loss and damage. The Claimant therefore claimed from the Defendants special damages in the sum of \$2,452.60, general damages to be assessed, costs and interest.

[5] Following a trial on liability, in a written judgment delivered on 25th July, 2024 and re-issued on 2nd August, 2024 the learned Trial Judge found that both Defendants breached their duty owed to the Claimant and must bear responsibility for her injuries suffered. The trial judge apportioned liability between ABI Insurance and Redcliffe Holdings as to 20% to ABI Insurance and 80% to Redcliffe Holdings. The trial judge further found that the global award to the Claimant on her claim should be reduced by 5% on account of a finding of contributory negligence on the part of the Claimant. The learned trial judge therefore made the following orders:-

- "1. The claimant's claim is granted as prayed apportioning liability as between the first and second defendant as to 20% to the first defendant and 80% to the second defendant.
2. The global sum to be found due on the assessment of damages is to be reduced by 5% representing the finding of contributory negligence on the part of the claimant.
3. The claimant is to file an application for the assessment of damages within 45 days of the date of this order and the same is to be set down before a Master of the High Court for case management.
4. Costs to the successful claimant to be determined on the assessment."

[6] The issue of the Defendants' liability, apportionment of liability and contributory negligence having been determined at trial, the only task which remained for this Court was to determine how much compensation was due to the Claimant based on the evidence she adduced in support of her claim for special and general damages.

[7] Witness statements and written submissions were filed by the Claimant and the Defendants for the assessment of damages. The Claimant also sought and obtained permission for Dr. Deepraj Gaekwad to be deemed an expert witness and to file an expert report for the trial of the claim. This expert report was filed on 17th April, 2023. The Claimant later sought and obtained permission to file an updated expert report of Dr. Gaekwad for the assessment of damages. The updated expert report of Dr. Gaekwad was filed on 16th December, 2024. Written questions were put by the Defendants to Dr. Gaekwad about his updated expert report and the written answers of Dr. Gaekwad to the written questions of the Defendants were filed by the Claimant on 12th June, 2025. These written answers of Dr. Gaekwad are treated as part his updated expert report in accordance with rule 32.8(4) of the Civil Procedure Rules (Revised Edition) 2023 (“**CPR 2023**”).

[8] I will first consider the Claimant’s claim for general damages.

General Damages

General Damages for Pain, Suffering and Loss of Amenities

[9] It is now well settled in the jurisdiction of the Eastern Caribbean Supreme Court following the guidance in **Cornilliac v St Louis**¹ that in assessing general damages in personal injury cases, the court has to consider: (1) the nature and extent of injuries suffered; (2) the nature and gravity of the resulting physical disability; (3) the pain and suffering endured; (4) the loss of amenities suffered; and (5) the extent to which the claimant’s pecuniary prospects have been affected.

[10] I will therefore consider the Claimant’s claim for general damages guided by the above principles.

The Nature and Extent of Injuries Suffered

[11] The Claimant was born on 30th July, 1969. She was 49 years old at the time of the Accident on 11th January, 2018 and was 56 years old as of the date of the assessment of damages hearing.

[12] The Claimant’s injuries following the Accident as pleaded in her statement of claim were:-

¹ (1965) 7 WIR 491.

- (i) C6/C7 prolapsed intervertebral disc
- (ii) L5/S1 disc bulge.

- [13] The Claimant's medical history since the Accident is set out in the expert report of Dr. Gaekwad dated 14th April, 2023 and updated medical report dated 12th December, 2024. Dr. Gaekwad's expert reports were based on his clinical observations of the Claimant and his review of the Claimant's previous medical reports.
- [14] The Claimant first presented for specialist orthopaedic evaluation by Dr. Gaekwad on 17th January, 2022 approximately three and a half years after the Accident. Dr. Gaekwad noted that the Claimant complained of lower back pain with truncal muscles spasm while walking and truncal paraspinous pain. He further noted that the Claimant reported paraesthetic (abnormal, non-painful sensations, "pins and needles") radiation to bilateral upper limbs (arms) with the left being more symptomatic than the right.
- [15] Dr. Gaekwad noted that the Claimant had previously completed an MRI scan of the lumbar spine dated 19th January, 2018 and an MRI of the Claimant's cervical spine dated 16th January, 2018.
- [16] A review of the radiologist's report of the lumbar spine indicated that the MRI findings were consistent with disc desiccation, diffuse disc herniation L5/S1, mass effect on cauda equina and compromise of the right lateral recess.
- [17] In relation to the MRI of the Claimant's cervical spine, the radiologist reported that the MRI findings of the Claimant's cervical spine were consistent with disc herniation C6/7, with mass effect on cord, and posterior osteophytes.
- [18] At an examination of the Claimant by Dr. Gaekwad on 30th September, 2022 the Claimant complained of left more than right lower limb and plantar pain.
- [19] In his expert report, Dr. Gaekwad further noted MRI studies of the Claimant's lumbar spine and the cervical spine dated 10th October, 2022. The MRI of the lumbar spine revealed:-
- (i) Progression (worsening) of the pathology in the lumbar spine – compromise of the right lateral recess and right nerve root contact;
 - (ii) L5/S1 disc herniation with mass effect on cauda.

- [20] The MRI of the cervical spine revealed:-
- (i) Disc herniation at C6/7;
 - (ii) Mass effect on the thecal sac and cord;
 - (iii) Posterior osteophytes.
- [21] Additionally, Dr. Gaekwad noted that a plain radiographic study of both of the Claimant's feet (lateral view) was conducted and bilateral heel gel pad inserts were advised with per-oral adjuvant anti-inflammatory and neuromodulator.
- [22] In his updated expert report dated 12th December, 2024 Dr. Gaekwad stated that the Claimant was evaluated by him on 13th November, 2024 when she complained of left upper chest pain with radiation to the left arm associated with stiffness-tingling sensations of the left fingertips. He stated that the Claimant also voiced an inability to lie on the left side on account of aggravation of symptoms. Active left elbow extension and exposure to cold temperature aggravated pain.
- [23] Dr. Gaekwad noted that the Claimant had been evaluated on 29th September, 2023 when improvement in plantar pain was reported with alteration of footwear as had been recommended.
- [24] Dr. Gaekwad further noted that at an evaluation on 29th September, 2023 the Claimant complained of right knee posterior pain extending to the lower third of ipsilateral thigh and the clinical examination inferred right semitendinosus tenderness and popliteal cyst with meniscus partial tear. No sensory/motor deficit of the right lower limb was evident at this evaluation. Doppler ultrasound arterio-venous study of right lower limb was recommended and reported normal by the radiologist as per the report dated 7th November, 2023.
- [25] Dr. Gaekwad further noted that on 2nd September, 2024 the Claimant narrated left shoulder pain radiating proximally to the neck and distally to third and fourth fingers. Clinically, restriction of active movements in all directions in the terminal range was noted, suggestive of supraspinatus and subscapularis tendonitis. Following the initial course of peroral pharmacotherapy (anti-inflammatory analgesic, muscle relaxant and neuromodulator) left supraclavicular swelling was evident with symptom of pain extending to left arm with stiffness. MRI scans of cervical spine and left shoulder were recommended.
- [26] Dr. Gaekwad noted that an MRI study dated 24th October, 2024 of the cervical spine reported by the radiologist revealed:

- (i) Spondylosis with C3/4, C6/7, C7/T1 annular disc bulge indenting the anterior CSF column;
- (ii) C7/T1 level disc bulge being eccentric to the left side narrowing the left neural foramen with compression of exiting nerve.

[27] An MRI scan of the left shoulder revealed:-

- (i) Superior subscapularis recess effusion

[28] Dr. Gaekwad noted that the latest MRI scan of the cervical spine revealed an additional finding of C7/T1 disc bulge and compromise of left exiting nerve which contributed to clinical-symptomatic left supraclavicular and upper limb involvement. He noted that left superior subscapularis effusion partly contributed to upper chest pain on the left side with the cardiac cause ruled out previously.

[29] In answer to a written question from counsel for the Defendants about his updated report, Dr. Gaekwad stated that spondylosis is commonly age-related in persons over forty years of age and early spondylosis is present in individuals when injured at younger age. He noted that the Claimant's diagnosis of spondylosis, in this case, was not a direct consequence of the Accident.

[30] Learned counsel for the Defendants also asked Dr. Gaekwad what evidence was there to support a direct correlation of the additional C7/T1 disc bulge and compromise of left exiting nerve and upper left side chest pain to the Accident. In response, Dr. Gaekwad noted that C7/T1 disc bulge with compromise of left exiting nerve will cause neck pain with radiation to left shoulder, arm, hand and paraesthesia (numbness-tingling) of the fingers. He stated that the confirmation of C7/T1 disc bulge via latest MRI scan was a relatively new finding suggestive of worsening of cervical pathology over the years. Notably, Dr. Gaekwad indicated that the symptoms of left upper chest pain and C7/T1 disc bulge are not directly correlated to the Accident.

[31] Based on the evidence of Dr. Gaekwad, it appears that the Claimant's more recent complaints and new clinical findings as revealed in the MRI report dated 24th October, 2024 are not a direct consequence of the Accident.

The Nature of Gravity of Resulting Physical Disability

- [32] In his initial 2023 expert report, Dr. Gaekwad assessed the Claimant's total disability arising out of the Accident on 11th January, 2018 as 19% whole person impairment which he stated affects her activities of daily living (ADL) besides climbing stairs and walking on inclined surfaces.
- [33] In his updated 2024 expert report, Dr. Gaekwad noted that the latest MRI scan of the Claimant's cervical spine revealed additional findings of C7/T1 disc bulge and compromise of left exiting nerve which contributes to clinical-symptomatic left supraclavicular and upper limb involvement. He stated that left superior subscapularis effusion partly contributes to upper chest pain on the left side with the cardiac cause ruled out previously.
- [34] Dr. Gaekwad noted that the additional percentage of disability as per Guides to the Evaluation of Permanent Impairment - Sixth Edition of American Medical Association, accounting for C7/T1 disc bulge and nerve root compromise in the absence of Nerve Conduction study till the preparation of the updated 2024 medical report, indicated a net increase of permanent impairment of 5% over the initial 19% to a total of 24% whole person impairment.
- [35] It is to be noted, however, that Dr. Gaekwad has stated that the Claimant's symptoms of left upper chest pain and C7/T1 disc bulge are not directly correlated to the accident. In my view, based on the medical evidence, it would seem that the 5% increase in the Claimant's permanent impairment was not solely as a result of the Accident.

The Pain and Suffering Endured

- [36] The Claimant's evidence for the assessment of damages is set out in her witness statement filed on 31st March, 2023 her supplemental witness statement filed on 19th October, 2023 and her second supplemental witness statement filed on 14th February, 2025.
- [37] Throughout her witness statements, the Claimant described in detail the pain and suffering she endured since the Accident on 11th January, 2018. This included sharp headaches, pain and discomfort to her upper middle and lower back, and pressure and pain to her neck. She has sensitivity to cold and more recently began experiencing pins and needles sensations. The pain and suffering she endured has resulted in her attending physiotherapy since the accident and multiple visits to various specialist doctors as she sought relief for the pain and discomfort.

- [38] There was no real challenge to the Claimant's evidence as to the pain and suffering she experienced and it is therefore unnecessary for me to set out all her evidence in detail in this decision.

The Loss of Amenities Suffered

- [39] In her witness statement and second supplemental witness statement, the Claimant described the loss of amenities she has suffered due to the injuries she sustained in the Accident. The Claimant explained that stooping and bending causes extreme back pain and discomfort which makes it difficult to do household chores and to garden like she used to. She stated that since the injury, she is unable to carry items beyond a certain weight without experiencing intense pain for an extended period thereafter, which causes difficulties shopping as she cannot carry heavy bags, necessitating lifestyle changes. She further stated that her hobby/income earner, doing crafting has been curtailed as she is unable to find a comfortable seating position.
- [40] The Claimant stated that she experiences pain in her pelvic girdle when she walks and stated this limits the amount of time she can spend walking and prevents her from walking for long distances and this has affected her ability to go walking as a form of exercise.
- [41] The Claimant also stated that the pain she experiences has affected her social life and her ability to be intimate with a partner. She stated that going out on social dates has become difficult because by the end of the evening she is suffering from severe neck and back pain. She says this diminishes her prospect of marriage or any long-term relationship.
- [42] The Claimant also explained the difficulty of both driving and being a passenger in a car since the Accident due to her back pain and leg and foot pain. The Claimant also described extensively how her injuries have affected her ability to sleep due to back pain and the inability to lie on her sides.

Loss of Pecuniary Prospects

- [43] As mentioned above, the Claimant stated in her witness statement that she had had to limit her hobby, craftmaking, which was an additional revenue earner for her. She stated that craftmaking is no longer as enjoyable because it is usually

difficult to find a comfortable position for any considerable period and she is forbidden from sitting on the floor.

- [44] The Claimant further stated that given her limitations of movement and the likelihood that her percentage impairment will increase as she gets older, there is a real risk of her suffering loss of earning capacity as she becomes less attractive on the job market due to her injuries.
- [45] The Claimant's pecuniary prospects will be discussed in greater detail under the head of loss of earning capacity.

Award of General Damages for Pain Suffering and Loss of Amenities

- [46] The purpose of compensation in personal injury cases is to attempt to put the injured party back in the position he or she was in before the injuries occurred. The assessment of damages is not a precise calculation as the aim is to provide reasonable compensation for the pain and suffering and loss of amenities. The court must strive for consistency by using comparative cases tailored to the specific facts of the individual case. Lord Hope of Craighead in **Wells v Wells**² explained the approach in the following terms:

“The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the Court's basic estimate of the [claimant's] damage”.

- [47] Learned Counsel for the Claimant submitted that the Claimant should be awarded the sum of \$175,000.00 in general damages for pain suffering and loss of amenities as compensation for the injuries she sustained in the Accident. Learned Counsel for the Claimant submitted the following five cases from within the jurisdiction of the Eastern Caribbean Supreme Court for the Court's consideration of its award to the Claimant:-

- (i) **Oscar Frederick v LIAT (1974) Limited**:³ The claimant slipped and fell into an uncovered hole on the premises of the defendant. He twisted his right ankle and fell heavily to the ground causing injury to his back. He was 56 years old at the time of the accident and 61 years old by the trial of

² [1998] 3 All ER 481.

³ ANUHCV2007/0391 (delivered 31st May 2010, unreported).

his claim. The court found that this accident was a result of the defendant's negligence. The claimant fell a year later but the defendant was found not to be liable for that fall. The claimant's injuries as accepted by the court were injury to his lumbar spine manifested by disc desiccation at L3/L4 and L4/L5, with mild to moderate disc bulges at L3/L4 and a small disc bulge at L5/S1. The claimant also appeared to have signs of a herniated synovial cyst. The claimant's second fall exacerbated or aggravated his injuries to the extent of producing additional disc desiccation and disc bulges at L2/L3. The claimant had severe lower extremity pain, weakness and gait dysfunction. The Claimant was assessed as having a permanent physical impairment of 17%, however his assessed physical impairment resulted not only from the incident giving rise to the award to the claimant but also from the claimant's subsequent fall for which the court determined that the defendant was not liable. At the trial of the claimant's claim, he complained of extreme pain and discomfort as a result of the injury for over five years with no end in sight. He took painkillers and other sedatives for the pain. The Claimant's social life and self esteem were also negatively affected as a result of the injuries he sustained. In 2010, the court awarded the claimant \$80,000.00 for pain and suffering and \$60,000.00 for loss of amenities.

- (ii) **Joseph Joseph v Peter Hilton et al.**⁴ The claimant sustained injuries whilst he was a passenger in a motor vehicle involved in an accident. He was admitted to the hospital with severe neck pain. He underwent surgery for open reduction and interspinous wiring with base grafting, and had to wear a cervical collar for three months. The claimant's injuries were described as severe tenderness posterior aspect of his neck, grade 4/5 in both limbs, subluxation of C4-C5 vertebrae. He was diagnosed with 4th cervical vertebrae which had shifted about 10%. His permanent disability was initially assessed as 15%. In a further medical review, the claimant complained of stiffness and discomfort over his neck, shoulders and upper back with decreased power in his right upper limb. His back pain was aggravated by prolonged standing. At this further assessment, his disability was assessed at 25% over. He was awarded the sum of \$100,000.00 for pain, suffering and loss of amenities.

- (iii) **Anita Tobitt v Grand Royal Antigua Beach Resort Limited and Stanford Frederick**:⁵ The claimant was injured when she was a

⁴ SLUHCV2012/1025 (delivered 29th June 2017, unreported).

⁵ ANUHCV2006/0026 (delivered 13th October 2010, unreported).

passenger in a bus which hit an object causing it to bounce and skid. The claimant was 35 years old at the time of the accident and about 41 at the time of the assessment of damages. The claimant had a prolapsed lumbar intervertebral disc/lumbo-sacral disc with diminished sensation in the dermatome distribution of L5-S1. The MRI revealed central and left lateral disc herniation at L5/S1 with impingement of the thecal sac. She was found to be 8% disabled. In 2010, the claimant was awarded \$50,000.00 for pain, suffering and loss of amenities.

- (iv) **Michael De Costro v Antigua Masonry Products Limited**.⁶ The claimant was injured in an accident in the course of his employment with the defendant whilst operating a block plant machine which caused his legs to be pushed apart. The claimant's medical reports showed that he sustained the following injuries: (a) severe amount of gas in the epigastric region; (b) disc desiccation; (c) substance degeneration; (d) disc herniation L4/L5 and L5/S1; mass effect on thecal sac and cauda, compromise of the lateral recesses and bilateral nerve root contacts. The claimant had endured pain and suffering from the time of the incident. Up to the filing of his witness statement for trial, the claimant was still experiencing back pain and had been unable to sleep in a bed because of pain and discomfort and had to sleep sitting in a makeshift hammock. He had surgery and permanent partial disability at 25%. He was awarded \$100,000.00 for pain, suffering and loss of amenities and diminution in his pecuniary prospects by the court in 2012.

- (v) **Miriam Myers v Dickenson Bay Hotel Management Ltd DBA Sandals Antigua**.⁷ The claimant was formerly an employee of the defendant and fell at her workplace. The claimant was diagnosed with L4/5 broad disc herniation with severe degeneration of the L4/L5 disc. She had permanent partial disability of 7% and a recommendation for surgery. Her award in 2016 was \$95,000.00 for pain, suffering and loss of amenities.

[48] Learned Counsel for the Claimant submitted that in light of the foregoing and in particular the case of **Oscar Frederick**, a conservative sum as compensation for the Claimant's pain, suffering and loss of amenities is \$175,000.00 taking into account that the award in **Oscar Frederick** was made 18 years ago, the impact of inflation, the fact that the claimant in **Oscar Frederick** had a previous injury, and

⁶ ANUHCv2010/0456 (delivered 11th April 2012, unreported).

⁷ ANUHCv2013/0231 (delivered 6th October 2016, unreported).

the comparative ages of the claimant in that case versus the Claimant in the case at bar.

[49] Learned Counsel for the Defendants submitted that the Claimant should be awarded the sum of \$70,000.00 for pain, suffering and loss of amenities. She submitted 15 cases from the jurisdiction of the Court for consideration in making an award to the Claimant. Each of the 15 cases were read and considered. The following cases were noteworthy:-

- (i) **Nigel Mason v Maundays Bay Management Ltd (Trading as Cap Juluca Hotel)**:⁸ During the course of his employment with the defendant, the claimant fell and sustained personal injuries. As a result of the fall, the claimant suffered disc herniation at L5/S1 which produced sciatica pain affecting the back, hip and outer side of the leg caused by compression of a spinal nerve root in the lower back. No indication of his permanent disability was given. He was awarded the sum of \$50,000.00 for pain, suffering and loss of amenities.
- (ii) **Adina Hector v Mark Francis**:⁹ The claimant was injured in a motor vehicle accident. The claimant injuries comprised: (a) chronic cervicalgia; (b) diffused disc herniation; (c) pins and needles sensation with diminished sensation in the upper right extremity; and (d) 7% permanent disability of the whole person which would increase with age. The claimant complained of being in constant pain and being unable to have undisturbed sleep at times. The claimant had been unable to perform ordinary functions such as sitting and/or standing for prolonged periods and lifting heavy items without pain. The court noted that although the claimant appeared to have had an improvement in her condition, she still experienced pain and there was no indication that it would not continue at least intermittently. The claimant was awarded the sum of \$70,000.00 as general damages for pain, suffering and loss of amenities.
- (iii) **Blondell Dyer-Christopher v Mcbert Arthur**:¹⁰ The claimant was injured in a motor vehicle accident. MRI imaging of the LS spine indicated that “there is a 5.68mm x 6.28 mm diffuse disc herniation at L4/5....mass effect on the thecal sac and cauda equina....the lateral recesses are not compromised and there is no nerve root contact.” An MRI of the C spine indicated that “there is hypertrophy of the ligamentum flavum at the level

⁸ AXAHCV2006/0090 (delivered 23rd June 2009, unreported).

⁹ ANUHCV2018/0081 (delivered 3rd March 2020, unreported).

¹⁰ ANUHCV2015/0371 (delivered 25th July 2022, unreported).

of D2.” An initial medical report of the claimant stated that the claimant’s prognosis was good and she was expected to recover within 6 months with 98% functionality. A subsequent report stated that the claimant’s prognosis was guarded from a medical standpoint and it was anticipated she would have continued back pains and medical intervention may become necessary. A more recent medical report indicated that the Claimant had been experiencing severe lower back pains, difficulty sitting, standing, lifting objects, difficulty walking up steps for which she had to buy specially prescribed shoes to minimize the pain to the lower back. She experienced severe lower extremity cramps bilaterally during climax. In a medical report, the doctor also stated that the claimant’s pain persisted despite rigorous treatment with analgesics and anti-inflammatory agents, which also resulted in a peptic ulcer that was managed with medication. The claimant was awarded \$70,000.00 in general damages for pain, suffering and loss of amenities.

- (iv) **Rashid Pigott v Galeforce Windows & Doors Inc.**¹¹ an award of \$50,000.00 was made to a claimant (42 years old at the time of the accident and 45 at the time of the assessment of damages) who had suffered posterior osteophytes at C4/5, C5/6 and C6/7 which contained diffuse disc herniations at those levels. The claimant in that case was assessed as having a partial disability of 40% which would be lessened by surgical treatment to about 15%.

[50] I have carefully considered the cases referred to the Court by learned Counsel for the Claimant and learned Counsel for the Defendants in the context of the injuries sustained by the Claimant as a result of the Accident, her resulting physical disability, the pain and suffering she has endured, and the loss of amenities she has suffered. I have noted the similarities and the differences between the claimants in those cases and the Claimant in the present case. I consider the Claimant’s injuries to be more similar in nature to the claimants in **Oscar Frederick** and **Michael De Costro**. I have also noted the vintage of the cases referred to the Court.

[51] The Claimant’s level of percentage of permanent disability is relatively high, which sets apart most of the cases referred to by learned Counsel for the Defendants. I have noted that the Claimant’s initial physical disability was assessed at 19% but was increased to 24% owing to a more recent finding of C7/T1 disc bulge and compromise of left exiting nerve. Dr. Gaekwad noted, however, that the recent

¹¹ ANUHCv200410069 (delivered 11th January 2007, unreported).

finding of C7/T1 disc bulge and chest pain experienced by the Claimant was not directly related to the Accident.

- [52] Guided by the principles on assessing an award of general damages for pain suffering and loss of amenities, and considering the ongoing pain the Claimant experiences, the impact of her injuries on her daily living, her percentage of disability, and guided by the awards in the aforementioned cases of a similar nature but also noting their vintage, I am of the view that an award of \$140,000.00 for pain, suffering and loss of amenities is fair compensation to the Claimant.

Future Medical Expenses

- [53] The Claimant's claim for future medical expenses was largely based on a medical report of Dr. K.K. Singh dated 26th June, 2020.
- [54] Relying on the medical report of Dr. Singh, learned Counsel for the Claimant submitted that the Claimant will require orthopedic consultation as may be required depending on physical findings at \$250.00 per session as well as physiotherapy at \$120.00 per session. Further relying on Dr. Singh's report, learned Counsel for the Claimant submitted that the Claimant is likely to require surgical intervention in the future and given the possibility of incurring this cost, the sum of \$80,000.00 should be awarded to the Claimant.

Orthopedic Consultation and Physiotherapy

- [55] Learned Counsel for the Claimant submitted that Dr. Singh's report indicates that the cost of orthopedic consultation is \$250.00 per session at 8 to 10 sessions per year or more if symptomatic as well as physiotherapy at \$120.00 per session.
- [56] Learned Counsel for the Claimant submitted that in making an award to the Claimant for these future medical expenses, the Court should adopt a multiplier - multiplicand approach. Learned Counsel for the Claimant submitted that the Claimant was 49 years old at the time she sustained injury and so it is appropriate to adopt a multiplier of 7. Thus, using a multiplier of 7, learned Counsel for the Claimant submitted that the cost of future orthopedic consultations should be awarded as follows:-

$\$250.00 \times 10 \text{ sessions per year} \times 7 \text{ (multiplier)} = \$17,500.00$ for the cost of consultation.

- [57] Learned Counsel for the Claimant further submitted that based on Dr. Singh's medical report, the Claimant would require physiotherapy at an average cost of EC\$120.00 per session. Again, using a multiplier of 7, learned Counsel for the Claimant submitted that the cost of future physiotherapy should be awarded as:-

$\$120.00 \times 10 \text{ sessions per year} \times 7 \text{ (multiplier)} = \$8,400.00.$

- [58] Learned Counsel for the Claimant submitted therefore that the Claimant should be awarded a total sum \$25,900.00 for physiotherapy and orthopedic consultation for the rest of her life.
- [59] Learned Counsel for the Defendants resisted any award to the Claimant for orthopedic consultations and physiotherapy. Learned Counsel for the Defendants submitted that the Claimant's claims for future medical expenses are premised on a recommendation from Dr. Singh in a medical report dated 26th June, 2020 and that Dr. Singh is not a witness of fact in these proceedings, he has not provided a witness statement, he was not deemed an expert witness and his medical report is not properly before the Court. Furthermore, learned Counsel for the Defendants submitted that Dr. Singh's medical report is a document ABI Insurance specifically did not agree to be relied on at trial and is contained in the Claimant's list of not agreed documents.
- [60] Learned Counsel for the Defendants submitted that moreover, the Claimant has been under the care and supervision of Dr. Gaekwad since 17th January, 2022. She submitted that Dr. Gaekwad has evaluated the Claimant more than once since his first medical report of 26th June, 2020 and has provided several medical reports to the Claimant and has submitted two expert reports to the Court for the purpose of these proceedings. Learned Counsel for the Defendants submitted that there is no recommendation for physiotherapy and/or consultations in any of Dr. Gaekwad's medical reports.
- [61] Learned Counsel for the Defendants submitted that taking everything into account, the Claimant has not established a basis for an award for physiotherapy and/or consultations, and that this Court should decline to make any award for physiotherapy and/or consultations for the reasons set out above.

- [62] The Claimant was cross-examined extensively by learned Counsel for the Defendants in relation to her claim for future medical care. Under examination, the Claimant said she based her figure for consultations on previous doctor visits and how much they cost.
- [63] At the prompting of learned Counsel for the Defendants, the Claimant could not point to anywhere in the expert reports of Dr. Gaekwad where he made a recommendation for consultations for any period of time and the cost.
- [64] As it relates to physiotherapy, the Claimant was also cross-examined extensively as to how she supported her claim for physiotherapy. Under cross-examination, the Claimant initially agreed with learned Counsel for the Defendants that Dr. Gaekwad's expert reports do not explicitly speak to her needing physiotherapy.
- [65] On re-examination by learned Counsel for the Claimant, the Claimant agreed with her Counsel that in relation to physiotherapy, Dr. Gaekwad did indicate in his report that the Claimant had previously been advised physiotherapy, that she was partially compliant with the recommended self-directed exercises and that better compliance and regularity of the rehabilitative regime was re-emphasized. In relation to future consultations, the Claimant agreed with her counsel that in his report, Dr. Gaekwad stated that per oral neuromodulator, and analgesics as needed were advised.

Discussion

- [66] I agree with the submissions of learned Counsel for the Defendants that Dr. Singh was not called as a witness of fact nor did the Claimant seek permission to deem Dr. Singh as an expert witness for the purpose of these proceedings and to rely on his expert report. Dr. Gaekwad was deemed the Court's expert and has filed two reports. The Claimant has also been in the care of Dr. Gaekwad since 2022 and based on his updated expert report, the Claimant was seen and was evaluated by Dr. Gaekwad as late as 13th November, 2024. I agree with learned Counsel for the Defendants that Dr. Gaekwad would have been best placed to advise on the Claimant's future treatment.
- [67] Considering Dr. Gaekwad's comments in his expert reports about the Claimant's future medical care, Dr. Gaekwad's recommendations were essentially for the Claimant to be consistent with self-directed exercises and for her to take oral medications as advised. However, in my view, there is no medical evidence before the Court to support the Claimant requiring multiple orthopedic consultations per

year for the rest of her life as an outcome of the injuries she sustained in the Accident. Having said that, up to present, I have no doubt that the Claimant is still experiencing some pain and discomfort from her injuries.

[68] Further, it is not lost on the Court that since the Accident and the filing of the Claimant's second supplemental witness statement she has had follow up visits to doctors. The Claimant's unchallenged evidence is that up to December 2024 because of pain and discomfort she was feeling, she had to consult with a neurologist and was treated.

[69] Given the pattern of the Claimant's previous doctor's visits, I am prepared to accept that she may require consultations in the future, albeit less frequently. I am therefore prepared to make an award of \$10,000.00 to the Claimant for future medical consultations.

[70] As it relates to future physiotherapy, the Claimant's own evidence in her witness statement was that physiotherapy had been a painful process and had not been successful in reducing the discomfort and pain due to her injuries. She stated that physiotherapy relieved pain for a short period, but the pain would always return with the same severity afterwards. In any event, the medical evidence before the Court is that the Claimant had been advised to be compliant with self-directed exercise. This clearly came out in the Claimant's evidence under cross-examination.

[71] There is no indication from Dr. Gaekwad's reports that the Claimant needs to undergo further formal physiotherapy sessions with a physiotherapist. The Claimant indicated under cross-examination that Dr. Gaekwad recommended that she attend physiotherapy, but this is simply not borne out in the evidence. The basis upon which the Claimant grounded an award for physiotherapy is the 2020 report of Dr. Singh. Dr. Singh's report was not filed in accordance with Part 32 of CPR 2023, and that recommendation is considerably out of date compared to the more recent reports of Dr. Gaekwad, which make no recommendation for physiotherapy sessions with a physiotherapist, but rather better compliance with self-directed exercises.

[72] Considering the above, I make no award to the Claimant for future physiotherapy.

Future Surgery

[73] The Claimant seeks an award for future surgery based on a statement in the medical report of Dr. Singh dated 26th June, 2020. I have already stated that Dr.

Singh's report is not properly before the Court. Dr. Gaekwad, who was deemed an expert witness and who has produced two expert reports to the Court, has given no indication of any need for the Claimant to undergo surgery in the future in relation to her injuries. Dr. Singh's report was reviewed by Dr. Gaekwad to produce his expert report and what was stated in Dr. Singh's report is worth noting:-

“As [sic] present there is no indication for surgical treatment but she will require surgery incase [sic] if her current ability decreases and her percentage of permanent physical impairment increases .”

- [74] Therefore, even considering Dr. Singh's report, there was no recommendation that the Claimant was required to undergo surgery and there is no updated medical evidence before the Court which states that the Claimant's increased permanent disability now warrants surgery. It is further noted that the Claimant has not undergone any surgery nor has she stated an intention to do so.
- [75] In **Claudette Francis v Cecilia Martin**,¹² the Court of Appeal struck down an award for further medical care in similar circumstances to the case at bar and stated that to 'base a claim for future medical expenses upon the cost of a particular surgical procedure where there is no evidence that it is necessary and where the Claimant has given no indication of any intention to undergo is to take into account irrelevant material.' Considering my discussion above, and further applying the Court of Appeal's reasoning to the present case, I see no basis upon which to make an award to the Claimant for future surgery.

Loss of Earning Capacity

- [76] The Claimant also seeks an award for loss of earning capacity. Learned Counsel for the Claimant submitted that should the Claimant lose her job and ever have to seek employment outside of her present employment, she would be handicapped as a direct result of her injury. Learned Counsel for the Claimant submitted that there is a real risk that the Claimant could lose her existing employment at some time in the future and may then, as a result of her injury, be at a disadvantage in finding equivalent employment or an equally well-paid job.
- [77] Learned Counsel for the Claimant submitted that the Claimant is currently engaged at work and earns a base salary of \$8,553.67. He submitted that based on his previous submissions, the Court should use a multiplier of 7 for calculating the Claimant's future loss. Learned Counsel for the Claimant submitted that given

¹² BVIHCAP2009/0007 (delivered 20th September 2010, unreported).

the Claimant's limitations of movement and the likelihood that the Claimant's percentage impairment will increase as she gets older, there is a real risk of the Claimant suffering loss of earning capacity as she is less attractive on the job market due to her injuries.

- [78] Learned Counsel for the Claimant suggested that a multiplicand of \$8,553.67 be used for the calculations under this head of damages. He submitted that taking into account the Claimant's age, the multiplier of 7 should be used to arrive at a cumulative sum of \$59,875.69 for loss of future earnings.
- [79] Learned Counsel for the Defendants submitted that no award should be made to the Claimant for loss of earning capacity. Learned Counsel for the Defendants submitted that the Claimant has been under the care and supervision of Dr. Gaekwad since January 2022 and he has produced several medical reports for the Claimant and two expert reports to the Court, none of which addressed the impact the Claimant's injuries have had on her ability to perform her job.
- [80] Learned Counsel for the Defendants further submitted that the Claimant has failed to discharge the duty to provide evidence to the Court of any real or substantial risk that due to her injuries, she will lose her job before the end of her working life (which ABI Insurance submitted is the mandatory retirement age of 60), or that her injuries would put her at a disadvantage on the job market.
- [81] Learned Counsel for the Defendants submitted that the Claimant, who was 56 years old at the time of the assessment of damages hearing, is four years from retiring and has maintained her employment with ABI Insurance since the Accident. Learned Counsel for the Defendants further submitted that the Claimant's salary has increased since the date of the Accident.
- [82] Learned Counsel for the Defendants referred the Court to the English authority of **Moeliker v A Reyrolle & Co Ltd**,¹³ the Antigua and Barbuda High Court decision in **Julie Osbourne v The Attorney General of Antigua**,¹⁴ and the judgment of the Jamaica Court of Appeal in **Monex Ltd. v Mitchell and Grimes**.¹⁵ Learned Counsel for the Defendants submitted that based on the case law, the Claimant is not entitled to an award for future loss of earnings as she is earning more since the accident. Learned Counsel for the Defendants further submitted that given the absence of any medical evidence from the Claimant to support a claim for loss of future earnings/earning capacity, it is reasonable to infer that the injuries the

¹³ [1977] 1 All ER 9, [1977] 1 WLR 132, CA.

¹⁴ ANUHCv2020/0416 (delivered 13th August 2025, unreported).

¹⁵ Supreme Court Civil Appeal No. 83/96.

Claimant received have not affected her ability to perform her duties and therefore she is not entitled to an award for loss of future earnings or loss of earning capacity. Learned Counsel for the Defendants further submitted that even if the Claimant was so entitled, this claim was not pleaded and/or particularised in the statement of case filed on 8th January, 2021.

Discussion

- [83] A claim for loss of earning capacity is meant to cover the risk that, at some future date during an injured claimant's working life, he or she will lose their employment and will then suffer financial loss because of the disadvantage in the labour market due to their injury.
- [84] In my view, having reviewed the Claimant's pleadings, although a claim for loss of earning capacity was not specifically pleaded by the Claimant, her failure to do so is not fatal to her claim. To my mind, looking at the circumstances of the case, loss of earning capacity is the kind of damage which would be an immediate consequence of the wrongful act of the Defendants as the nature of the Claimant's injuries pleaded would be evident of a likely handicap on the labour market.¹⁶
- [85] The leading cases on loss of earning capacity are **Moeliker v A Reyrolle & Co Ltd** and **Smith v Manchester City Council (or Manchester Corpn)**.¹⁷ In **Moeliker**, the following guidance was provided to determine the question of the risk of a claimant losing their employment sometime before the end of their working life:-

“Where a plaintiff is in work at the date of the trial, the first question on this head of damage is: what is the risk that he will, at some time before the end of his working life, lose that job and be thrown on the labour market? I think the question is whether this is a 'substantial' risk or is it a 'speculative' or 'fanciful' risk (see *Davies v Taylor*, per Lord Reid ([1972] 3 All ER 836 at 838, [1974] AC 207 at 212) and Lord Simon of Glaisdale ([1972] 3 All ER 836 at 844, [1974] AC 207 at 220)). Scarman LJ in *Smith v Manchester Corpn* referred to a 'real' risk, which I think is the same test. In deciding this question all sorts of factors will have to be taken into account, varying almost infinitely with the facts of particular cases. For example, the nature and prospects of the employers' business; the plaintiff's age and qualifications; his length of service; his remaining length of working life; the nature of his disabilities; and any undertaking or

¹⁶ See: Halsbury's Laws of England Vol 29 (2024) at para. 446.

¹⁷ (1974) 118 Sol Jo 597, 17 KIR 1, CA.

statement of intention by his employers as to his future employment. If the court comes to the conclusion that there is no 'substantial' or 'real' risk of the plaintiff's losing his present job in the rest of his working life, no damages will be recoverable under this head."

[86] In **Watson v Mitcham Cardboards Ltd**,¹⁸ the English Court of Appeal held that the **Moeliker** test, of a 'real' or 'substantial' risk of a claimant losing their job before the end of their working life, must not be applied too narrowly. The determination of the risk will always be a question of fact.

[87] An award for loss of earning capacity, as distinct from an award for loss of future earnings was explained by Michel JA in **Steadroy Matthews v Garna O'Neal**.¹⁹ At paragraph 46 of the judgment of the Court of Appeal, Michel JA opined:-

"Before moving on to address the award of general damages for pain, suffering and loss of amenities, I should address the submission made by counsel for the appellant that instead of making an award for loss of earnings on the basis of a multiplier and a multiplicand, the master ought to have made a Smith v Manchester award. But a Smith v Manchester award is made in a situation in which the injured party is in regular employment at the date of the trial but has a partial disability resulting from the injury which puts him at a disadvantage in the labour market because he may lose his employment and may not be able to get another similarly-remunerated job. In such a situation, the English Court of Appeal in Smith v Manchester considered that it would be impractical to try to work out a multiplier and a multiplicand on which to arrive at an award for loss of earnings and that the better approach was to make an award to the injured party for loss of earning capacity consequent on the injuries."

[88] The Claimant is still in regular employment and is presently suffering no loss of earnings because of her injuries. Thus, what the Claimant is seeking is an award for loss of earning capacity, not loss of earnings. Therefore, the multiplier-multiplicand approach, which would be used in cases of loss of earnings, and which has been suggested by learned Counsel for the Claimant, is not suitable for calculating any potential loss to the Claimant. If the Court is prepared to make an award to the Claimant for loss of earning capacity, the Court must make its best estimation of the risk of the Claimant losing her job and make an appropriate award to cover such a risk.

¹⁸ [1982] CLY 78, CA.

¹⁹ BVIHCVAP2015/0019 (delivered 16th January 2018, unreported).

[89] As previously stated, the Claimant was first examined by Dr. Gaekwad on 17th January, 2022. In his expert report dated 14th April, 2023 Dr. Gaekwad noted that a general examination of the Claimant revealed restricted active range of motion of the neck (cervical spine), right C6/7 sensory diminution with decreased grip strength of the left hand. He noted the Claimant's complaints of back pain, neck pain, and pins and needle sensations in the limbs. The doctor further noted an inability of the Claimant to use stairs. At a follow up examination of the Claimant, the doctor noted less than normal resistance of right finger reflexion. Dr. Gaekwad assessed the Claimant's disability arising out of the Accident at 19% whole person impairment which he stated affects her Activities of Daily Living (ADL) besides climbing stairs and walking on inclined surfaces.

[90] The Claimant is employed in a clerical position with ABI Insurance as Senior Administrator, Claims. Her job primarily involves her sitting at a desk processing claims. Under cross-examination, the Claimant stated that the job has a lot of movements as well. She stated that she has to walk up and down, go outside, and also travel to sites. She agreed that her job does not require her to lift heavy objects, but reiterated that it does require her to move around. When asked by learned Counsel for the Defendants what impact her injuries have had on her job performance, the Claimant stated the following:-

"I am slower in terms of processing things. So I take a little longer to process things. Physically, many times, I do mask a lot of what I do. Appearing normal umm, when I am really in pain. Umm, now, it only works, I think, because I can go in, sit for a bit. Most times when I get up, I have to sort of shift and organize myself to look normal after a while. So by the time I get to the person that I'm supposed to be seeing, like, you know, I'm walking normally, but, umm, I have a lot of back pain, umm, I can't lift things, like I said, I can't move readily. I, stairs are a problem for me. I cannot see myself umm, like doing anything else that would require me to move a lot, or. And I certainly don't think I'll be able to command that same salary. If I'm going to move. If I'm going to get a job, it would have to be something very similar. Otherwise I would not be able to function. Umm. May I again?..

One of the things that I think about is that whenever you start a new occupation you're asked if there any pre existing injuries, especially for the medical plan. And I would declare all of that which will make me less attractive on the job market."

- [91] The Claimant joined ABI Insurance on 14th March, 2016. The Accident occurred on 11th January, 2018 and she has remained in employment with ABI Insurance, at least right up to the assessment of damages hearing. When asked if she planned on leaving the job, the Claimant stated no, but she thinks her employer plans on making her leave.
- [92] Mr. Andre Knight, Acting General Manager of ABI Insurance filed a witness statement on behalf of the Defendants. Mr. Knight's evidence on behalf of the Defendants is that since the Accident, the Claimant was promoted from the position of Claims Officer to the position of Senior Administrator Claims. Mr. Knight further stated that since the Accident, the Claimant has received a salary increase pursuant to and under ABI Insurance's Collective Bargaining Agreement. Mr. Knight stated that as far as ABI Insurance is concerned, the Claimant will remain in its employ until she reaches its mandatory retirement age of 60, providing that there are no disciplinary or performance related issues. He stated that the Claimant is currently four years away from retirement from ABI Insurance.
- [93] Under cross-examination, Mr. Knight confirmed that ABI Insurance has made special accommodation for the Claimant since the injury, including special parking closer to the building and an ergonomic chair. Mr. Knight also agreed that he was aware of the Claimant's sensitivity to cold and that special accommodation was made for the Claimant by adjusting the temperature of the air conditioning for the Claimant. Mr. Knight also confirmed that he is involved in the recruitment process of new employees and that the health of a possible candidate is one of the considerations when deciding to hire a candidate.
- [94] Having assessed the medical and other evidence before the Court, it does appear that the Claimant has suffered some disability since the Accident. Dr. Gaekwad's reports do not specifically address the impact of the Claimant's injuries on the performance of her work tasks, however, as previously stated, he has indicated that her whole person impairment affects her activities of daily living.
- [95] Based on the Claimant's evidence, it is quite evident that her injuries have impacted her work life. The Claimant's mobility is affected, her ability to climb stairs, her comfort whilst seated at her desk, and her tolerance to cold office temperatures. The Claimant's resultant disability from the Accident and the effects on her work life are also evident from the evidence of Mr. Knight, who agreed that ABI Insurance has had to make certain special accommodation for the Claimant since the Accident.

- [96] It is also undisputed that the Claimant has had periods of sick leave since the Accident. This was in the earlier period after the Accident, and at a later period, due to pain the Claimant was experiencing. Having regard to the nature of the Claimant's injuries, and the type of work she is currently engaged in, I am satisfied that the Claimant will be somewhat handicapped on the labour market due to her medical condition.
- [97] As it relates to the risk of the Claimant losing her job, although ABI Insurance's evidence is that Claimant has been in employment with ABI Insurance since the Accident and that it expects that the Claimant will remain in its employ until she reaches its mandatory retirement age of 60, in my view, there is still a risk that the Claimant may lose her job before the end of her working life. The evidence on behalf of the Defendants as it relates to the Claimant's future employment is not unequivocal. Her future employment with ABI Insurance is qualified and it is contingent on performance. ABI Insurance is a company in the private sector. The Claimant has an injury causing her some disability in the workplace and there is medical evidence that the level of her disability could progress with age. There is a real possibility this can affect her job performance beyond a limit tolerated by ABI Insurance.
- [98] In my view, the risk of the Claimant losing her job is not insignificant, nor speculative, and whilst it may not be overwhelming, it is significant to the extent that the risk is real. Having considered all the circumstances of the case, the Claimant's injuries, the medical reports of Dr. Gaekwad, the Claimant's evidence and the Defendant's evidence, and the nature of the Claimant's work, I find that the Claimant will be handicapped on the labour market as a result of her injuries. And although I do not consider that the Claimant is so handicapped to prevent her from obtaining another job, the Claimant may nonetheless face some challenges securing work of a similar or better pay.
- [99] Being cautious not to take too restrictive an approach to the test in Moeliker, and considering the evidence before the Court, I am of the view that a real risk exists that the Claimant could lose her job before the end of her normal working life, even though ultimately that risk may never materialize. Having regard to all relevant circumstances, I am of the view that only a moderate award is required to cover the risk. I would therefore award the Claimant the sum of \$15,000.00 for loss of earning capacity.

Special Damages

[100] Special damages are quantifiable pre-trial losses suffered by a claimant as a result of the wrong of a defendant. It represents the out-of-pocket expenses or loss incurred prior to the trial of a claim and which is capable of substantially exact calculation; for example, past loss of earnings, past travel expenses, past care and the like. It is well settled so as to be considered trite that special damages must be strictly pleaded and proved to be recovered.²⁰ The learned authors of *Mc Gregor on Damages*²¹ put it thus:-

“Where the precise amount of a particular item of damage has become clear before the trial, either because it has already occurred and so become crystallised or because it can be measured with complete accuracy, this exact loss must be pleaded as special damage.”

[101] In her statement of claim, the Claimant pleaded special damages in the sum of \$2,452.60. In her second supplemental witness statement, the Claimant stated that she incurred various out of pocket and medical expenses as exhibited in her list of documents as a direct result of the Accident. She stated that these expenses included the cost of medical attention and prescription medicines to reduce the pain she endured due to the debilitating injury.

[102] The Claimant provided copies of the receipts and bills evidencing the expenditure in her lists of documents and bundle of exhibits, totaling \$11,644.74. Although the Claimant did not amend her statement of claim to update her claim for special damages, the Defendants’ evidence is that they have no issue paying this amount so long as it is supported by receipts or invoices stamped paid showing proof of payment. Learned Counsel for the Defendants in her written submissions also indicated the Defendants’ agreement to satisfy special damages in the sum of \$11,644.74.²²

[103] In his written submissions, learned Counsel for the Claimant submitted that the Claimant’s expenses amount to \$14,894.74. This sum is not evidenced in the witness statement of the Claimant. Further, the Defendant explicitly disagreed with this higher sum over the sum of \$11,644.74 set out in the Claimant’s supplemental witness statement.

²⁰ *Ikiw v Samuels and others* [1963] 1 W.L.R. 991; see also *Steadroy Matthews v Garna O’neal* BVIHCVP2015/0019 (delivered 16th January 2018, unreported).

²¹ 18th Edition at 44-012.

²² CPR 8.8 provides: The claimant may not rely on any allegation or factual argument which is not set out in the claim, but which could have been set out there, unless the court gives permission or the parties agree.

[104] Having considered the Claimant's bundle of receipts and paid invoices, I am satisfied that each expense was incurred in the course of her seeking treatment for her injuries and that the expenses total \$11,644.74. The Defendants have agreed to pay this sum.

[105] In light of the foregoing, I would award the Claimant special damages in the sum of \$11,644.74.

Interest

[106] The Claimant is awarded interest on her awards of special damages and general damages. In making the awards of interest, the Court is guided by the judgments of the Court of Appeal in **Martin Alphonso et al v Deodat Ramnath**²³ and **Terrance Amedee v Marcus Modeste**.²⁴

Costs

[107] As it relates to the issue of costs, the Claimant is entitled to her costs of this claim in accordance with CPR 65.5, and Part 65 of CPR 2023, appendices B and C.

Disposition

[108] In light of the foregoing, I make the following orders:-

(1) The Defendants, ABI Insurance and Redcliffe Holdings shall pay the Claimant the following, apportioned as between ABI Insurance and Redcliffe Holdings as to 20% to ABI Insurance and 80% to Redcliffe Holdings, with a reduction of 5% of the global award of damages representing the finding of contributory negligence on the part of the Claimant:-

(i) General damages for pain, suffering and loss of amenities in the sum of \$140,000.00 with interest from 6th May, 2021 the date of service of the claim on the Defendants, to the date of this Order at the rate of 5% per annum.

²³ (1997) 56 WIR 183.

²⁴ SLUHCVP2022/0001 (delivered 9th November 2023, unreported).

- (ii) The sum of \$10,000.00 for future medical expenses. No interest is awarded before judgment.
- (iii) The sum of \$15,000.00 for loss of earning capacity. No interest is awarded before judgment.
- (iv) Special damages in the sum of \$11,644.74 together with interest from the date of the Accident to the date of this Order at the rate of \$2.5% per annum.
- (v) Prescribed costs in accordance with rule 62.5 of the Civil Procedure Rules (Revised Edition) 2023 and Part 65 of the Civil Procedure Rules (Revised Edition) 2023, appendices B and C.

(2) Post judgment interest shall be at the statutory rate of 5% per annum.

[109] I wish to thank learned Counsel on both sides for their helpful oral and written submissions.

Carlos Cameron Michel
High Court Master

By the Court

Registrar