

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2024/0399
(FORMERLY CLAIM NO. ANUHCV2016/0128)

BETWEEN:

DESHAWN JAMES

Claimant

and

TEON JOSEPH

Defendant

Appearances:

Ms. Kivinee Knight-Edwards and Ms. Dericia Browne, Counsel for the
Claimant

Ms. Carlita Benjamin, Counsel for the Defendant

2026: February 10th, 13th.

ORAL DECISION

- [1] **MICHEL, M:** These proceedings arise from a road traffic accident ("**the Accident**") on 17th March, 2013 when a vehicle being driven by the Defendant and owned by Erdine Nathaniel, collided with the vehicle being driven by the Claimant. As a result of the Accident, the Claimant suffered personal injuries, loss and damage. The Claimant subsequently commenced these proceedings in negligence against the Defendant seeking special and general damages.
- [2] Following the trial of the claim, by written judgment delivered on 10th February, 2023 the learned Trial Judge determined that the Defendant handled the vehicle negligently, resulting in the Accident and that the Defendant was liable for losses resulting therefrom. The learned Trial Judge further ordered that the damages payable by the Defendant to the Claimant be referred to a Master in Chambers. The matter now comes on for assessment of damages.
- [3] The issue of the Defendant's liability having been determined at trial, the only task remaining for the Court was to determine how much compensation is due to the Claimant based on the evidence he has adduced in support of his claim for special and general damages.

[4] The Claimant filed a witness statement and written submissions in support of the assessment of damages. The Claimant further sought and obtained permission for Dr. K.K. Singh to be deemed an expert in these proceedings and for Dr. Singh to produce an expert report. Dr. Singh's expert report was duly filed by the Claimant. The Defendant filed an affidavit of means and written submissions for the assessment of damages. The Claimant and the Defendant were both cross-examined by opposing counsel at the assessment of damages.

[5] I will now consider the Claimant's claim for general damages.

General Damages

[6] It is well settled that in assessing general damages, the court will 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.¹

The Nature and Extent of Injuries Suffered

[7] The Claimant was born on 3rd October, 1983. He was 30 years old at the time of the Accident and 42 years old as at the date of the assessment of damages.

[8] The Claimant was taken to the Hospital for medical attention after the Accident. His injuries are outlined in the expert report of Dr. Singh. As a result of the Accident, the Claimant received a small laceration to the chin; small abrasions to the knuckles; deep laceration to the anterior aspect of the left leg and dorsum of the left foot, with active hemorrhaging and significant oedema. The Claimant's right thigh was swollen, with painful range of motion at the right hip. The range of motion at the right ankle was abnormal and very painful; there was also significant oedema to the right foot. A deep and extensive laceration was noted along the dorsum and medial aspect of his right foot with exposed metatarsals. There was active hemorrhaging, and the Claimant was very tender on palpation of the same. Imaging studies conducted included CT scan of the brain which was normal. X-rays showed a fracture of mid shaft of the right femur, fractures of the second and third metatarsals of the left foot and compound fracture of the metatarsals and tarsals of the right foot, with dislocation of the right ankle.

[9] The Claimant was immediately prepared for surgery, and was subsequently transferred to the operating theatre where he had debridement done, with

¹ See *Cornilliac v St Louis* (1965) 7 WIR 491.

open reduction and internal fixation of the right femur with insertion of a k-nail to the same, and the insertion of k-wires to the metatarsal fractures of the feet.

- [10] The Claimant received extensive post-operative treatment and was discharged from hospital on 22nd April, 2013 approximately one month after the Accident. The Claimant's right foot was obviously deformed with multiple scars over the dorsum
- [11] The Claimant was examined by Dr. K.K. Singh on 2nd March, 2023. Dr. Singh reported that the Claimant had classical signs to conclude the following diagnosis:-
- (i) Fracture right mid shaft femur with 5.9 cm shortening in right lower limb.
 - (ii) Fracture second and third metatarsal left foot with malunion and angulation.
 - (iii) Old healed compound fracture of second, third and fourth metatarsals with tarsal bones and mid foot dislocation (Lisfranc dislocation) involving forth and fifth tarso metatarsal joint with valgus deformity of the forefoot.
 - (iv) Old reduced compound dislocation of right ankle.
 - (v) Compensatory for scoliosis with concavity to left 43 degrees central on Thoracic 9th vertebrae because of leg length disturbance.

The Nature and Gravity of the Resulting Physical Disability

- [12] Dr. Singh has opined that the Claimant has been temporary disabled in the full functions of both his lower extremity and thoraco lumbar spine from the date of injuries until the date of the report and he has ended up with 5% of permanent physical impairment in functions of his left foot and 32% of permanent physical impairment in his right foot, 5% of permanent physical impairment in his right femur because of malunion and 5.9 cm of real shortening of right lower extremity. Dr. Singh reported that the Claimant has further ended up with secondary scoliosis on account of leg length disturbance which has generated 43% of a partially fixed curve in his thoracic spine centering on thoracic 9th vertebrae giving rise to 16% of impairment as a whole man. Dr. Singh noted that the Claimant did not give any history of any abnormality in his spine before the Accident.
- [13] Dr. Singh concluded this aspect of this report by assessing the Claimant's disability as 32% impairment as a whole man. I note that this contradicts the earlier indication of 16% impairment of as a whole man. Dr. Singh noted, however, that the Claimant's permanent physical impairment will increase as

he grows older on account of developing further post traumatic degenerative joint disease.

Pain and Suffering Endured

- [14] The Claimant did not detail the pain and suffering he endured in the aftermath of the Accident but focused his evidence on how he presently feels. He stated that due to the long hours he spends on his feet, he frequently experiences swelling on almost a daily basis. He stated that he treats this with routine soaking and massaging his right leg.
- [15] The Claimant stated that on mornings, after waking, he has to take about five to ten minutes to massage and do ankle exercises before he is able to get out of bed. He stated that his right leg is usually lifeless when he wakes up after sleep. He stated that he cannot simply jump out of bed.
- [16] The Claimant stated that he is still experiencing pain on almost a daily basis and some days the pain becomes excruciating so that he is unable to function in his everyday activities. He stated that notably, he had observed that the pain in his right knee is increasing, and the pain in his back is occurring more frequently.

Loss of Amenities Suffered

- [17] The Claimant stated that since the Accident, his right leg is shorter than the left. He stated that prior to the Accident, he was a gym enthusiast and would also do a lot of running, walking, jogging and bicycle riding. He stated that he was of a bigger and stronger build as he was engaged in weightlifting which he can no longer do especially as it relates to training his legs. The Claimant stated that on a few occasions he has tried to lift weights with his legs. He stated that he uses light weights of 20lbs and below and even then, his ankles get swollen after. He stated that since the Accident, he has a deformity of his right leg as a result of the injury to his ankle and hip. He stated that he runs and walks with a limp. The shape of his right foot has changed and it now points to the side as opposed to straight ahead. He stated that now he can no longer play basketball which he used to play every Friday evening and Saturday morning and was very good at it.
- [18] Under cross examination, the Claimant explained that to keep his physique, in addition to his work, he does exercise, running and cleaning of vehicles. From observing the Claimant whilst giving his testimony, it was apparent that he keeps himself physically fit, despite any challenges he may face with his injured leg.

Effect on Pecuniary Prospects

- [19] The Claimant was employed as a driver at the time of the Accident. He is now employed as a maintenance and houseman at a hotel. Based on his evidence, it appears that the Claimant has been employed in the intervening 12 years since the accident. The Claimant also indicated under cross examination that he cleans vehicles and sometimes does electrical work with his uncle. In my view, it does not appear that the Accident has greatly impacted the Claimant's pecuniary prospects.

Award of General Damages for Pain, Suffering and Loss of Amenities

- [20] 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”.

- [21] Learned Counsel for the Claimant has submitted that an appropriate award to the Claimant for pain suffering and loss of amenities is \$250,000.00. Learned Counsel for the Claimant relied on the following four cases from the OECS in support of this submission:-

- (1) **Casev Pigott et al v Veleloma Potter et al**,³
- (2) **Andy Bute v Gary "Trubbie" De Freitas et al**,⁴
- (3) **Marcel Fevrier et al v Bruno Canchan et al**,⁵
- (4) **Rasmin Rogers v Trone Creese et al**.⁶

- [22] Learned Counsel for the Defendant proposed an award to the Claimant of \$40,000.00 to \$80,000.00 for pain and suffering and \$20,000.00 to \$40,000.00 for loss of amenities. This would amount to a total of \$60,000.00 to

² [1998] 3 All ER 481.

³ ANUHCV2010/0423 (delivered 23rd August 2012, unreported).

⁴ SVGHCV2010/0303 (delivered 8th August 2012, unreported).

⁵ Saint Lucia Civil Suit No. 313 of 1989 (delivered 28th March 2022, unreported).

⁶ SVGHCV2017/0065 (delivered 10th April 2018, unreported).

\$120,000.00 in damages for pain, suffering and loss of amenities. Learned Counsel for the Defendant submitted the following cases for the Court's consideration:-

- (1) **Lorena Lambert v Michael Seraphin**;⁷
- (2) **Marcel Fevrier et al v Bruno Canchan et al**;⁸
- (3) **Sylvian Laurent v Simon Anthony Cuffy**;⁹
- (4) **Gemma Clarke v Robert Nicholas**;¹⁰
- (5) **Michael Francis v Ryan Richards**;¹¹
- (6) **Pereira v Mills**;¹²
- (7) **Eugene Teague v Claxton Ralph**.¹³

- [23] I have carefully read and considered the cases referred to by learned Counsel for the Parties and will not reproduce the facts of the cases here. I have, however, found each to be helpful in carrying out this assessment. I particularly found the cases of **Lorena Lambert**, **Marcel Feverir**, and **Andy Bute** to be helpful as comparative cases.
- [24] If one were only to consider the cases relied upon by learned Counsel for the Claimant, even taking into account the vintage of the cases, it would be quite evident that the award of \$250,000.00 proposed by learned Counsel for the Claimant is out of scale.
- [25] There is no doubt that the Claimant suffered serious injuries in the Accident. The Claimant sustained a mid-shaft fracture of his right femur, resulting in a 5.9 cm shortening of his right leg, multiple toe fractures, mid foot dislocation and ankle dislocation. He had a deep laceration of his left leg and lacerations on his foot resulting in scarring. The Claimant was also assessed with a notable percentage of permanent disability as a whole person.
- [26] Although the Claimant's percentage of disability has been assessed as high as 32% by Dr. Singh, based on the Claimant's evidence, it appears that he has been able to function quite well over the years since the accident. However, I have no doubt that the shortening of the Claimant's right leg has caused him discomfort and has affected his ability to fully exercise and weight train at the level he did before the Accident. The Claimant continues to feel pain up to present, especially when standing for long periods.

⁷ SLUHCV2015/0916 (delivered 24th April 2016).

⁸ Saint Lucia Civil Suit No. 313 of 1989 (delivered

⁹ DOMHCV2012/0238 (delivered 1st December 2015, unreported).

¹⁰ DOMHCV2004/0268 (delivered 20th April 2009, unreported).

¹¹ GDAHCVAP2013/0033 (delivered 1st June 2018, unreported).

¹² SKBHCV2004/0038 (delivered 23rd November 2004, unreported).

¹³ ANUHCV2007/0417 (delivered 9th July 2010, unreported).

[27] I take into account the nature and extent of the Claimant's injuries, the resultant physical disability, particularly the shortening of his leg and the scarring on his foot. I also take into account the pain and suffering he has endured since the accident and the loss of amenities resulting from the shortening of his leg. I am also cognizant of the awards by the courts in the cases referred to this Court and I have found them to be comparable to the present case. Taking all of the above into account, and the vintage of the cases referred to the Court, I am of the view that an award of \$90,000.00 pain and suffering and \$60,000.00 for loss of amenities, making a total award of \$150,000.00 is fair compensation to the Claimant.

Future Medical Expenses

[28] In his expert medical report, Dr. Singh makes several recommendations for the Claimant's future medical care.

Future Surgery

[29] In his report, Dr. Singh referred to a medical report of Dr. Richards from the Hospital wherein Dr. Richards indicated that the Claimant had deformity to the right ankle and hip and required further surgeries. Dr. Singh further stated that he has discussed in detail with the Claimant the pros and cons of leg lengthening procedures of his right femur and fusion of tarso metatarsal joints of his right foot and that the Claimant has opted to have surgery. Dr. Singh stated that the cost of the surgery to be performed in Trinidad would total US\$32,000.00. Dr. Singh further stated that he believed this cost is only for the surgical procedures done by the surgeons and does not involve the cost of hospitalization which would be an additional fee approximately ranging from US\$25,000.00 to US\$50,000.00.

[30] The Claimant provided no further documentary evidence to substantiate the cost of the surgery and hospitalization. Learned Counsel for the Defendant in her written submissions urged the Court to consider local and regional availability for the Claimant to undergo surgery as opposed to only considering the figures quoted by Dr. Singh. Learned Counsel for the Defendant submitted that there are at least three orthopedic consultants on Antigua. Learned Counsel for the Defendant submitted that the required surgery is available in other Caribbean counties such as Jamaica and Cuba, where the hospitalization as well as the surgery appear to be far more affordable. It is noted that learned Counsel for the Defendant has not placed any evidence before the Court in relation to the availability and cost of the surgical procedure in Antigua and Barbuda or elsewhere in the Caribbean region.

Physical Therapy

- [31] In his expert report, Dr. Singh stated that the Claimant needs monthly orthopaedic follow up with consultation cost of \$250.00 per visit in Antigua and that this does not involve the cost of any x-rays or other investigations. He further stated that the Claimant also needs physical therapy three times per week for the rest of his life, probably six months in a year, as and when prescribed. Dr. Singh stated that at present, the cost of physical therapy is \$125.00 per session.
- [32] Learned Counsel for the Defendant submitted that the recommendation by Dr. Singh for the Claimant to undergo physiotherapy appears to be speculative as his statements in relation to the frequency of the need for physiotherapy sessions are not consistent. There is merit in this submission.
- [33] Dr. Singh states that the Claimant would need to undergo physiotherapy three times per week for the rest of his life but then says for six months in a year 'as and when prescribed'. It seems to me that any physiotherapy would be as recommended at future consultations. I also note that there is no indication that since the Accident, the Claimant has engaged in physiotherapy. No claim has been made in respect of past expenditure for physiotherapy and no explanation has been provided as to why physiotherapy may not have taken place in the past. Further, Dr. Singh provides no explanation as to the need for the Claimant to undergo physiotherapy.

Orthopaedic Consultations

- [34] Dr. Singh states further in his expert report that the Claimant needs monthly orthopaedic follow-up, with a consultation cost of \$250.00 per visit in Antigua. He states that this does not involve the cost of any x-rays or other investigations. Again, Dr. Singh provides no explanation for the need for such frequent orthopaedic consultations. Based on the Claimant's claim and the evidence in support, it does not appear that in the 12 years since the Accident that the Claimant has been making orthopaedic visits with any regularity or had been recommended to have such regular consultations.

Orthotic Shoes, KAFO and Scoliosis Brace

- [35] In his report, Dr. Singh stated that the Claimant will also need orthotic shoes to compensate for his leg length disturbance with under correction of about 4.5 to 5 cm including a knee ankle foot orthosis (KAFO) on account of degenerative post traumatic disease osteoarthritis that the Claimant has in his ankle. Two pairs of shoes are recommended. Dr. Singh stated that the approximate cost would be US\$1,500.00 to US\$2,000.00 per pair every year.

[36] Dr. Singh further stated in his report that the Claimant may also require a scoliosis brace which may cost approximately US\$2,000.00 once every two years, for the rest of his life.

[37] I note that Dr. Singh's recommendation for orthotic shoes for the Claimant is to compensate for his leg length disturbance following the Accident. The Court is already prepared to make an award to the Claimant for corrective surgery, and in the circumstances, I am not minded to make an award to the Claimant for orthotic shoes for the rest of his life. However, in making an award for future medical expenses I will take into account that the Claimant may require a pair of shoes and KAFO whilst awaiting surgery.

[38] I note that Dr. Singh has indicated that the Claimant may require a scoliosis brace. Dr. Singh has not stated that the brace is necessary and there is no indication from the Claimant that he desires the brace. Due to the uncertainty of the need for the brace, I would refrain from making any award in this respect.

Discussion on Future Medical Expenses

[39] In **Seepersad v Persad & Anor (Trinidad and Tobago)**,¹⁴ the Judicial Committee of the Privy Council stated the following in relation to the costs of future medical treatment and medication:-

“It is not possible to form an accurate and verifiable estimate of the future cost of medical treatment and medication, because so much depends on how the appellant progresses in the future. It was not challenged that he had incurred such expense in the past, as is shown by the inclusion in the agreed special damage of a significant sum for medical treatment and medication. It does appear that there is likely to be some continuing expense, even if he improves significantly as time goes on. In their Lordships' opinion the most appropriate way to deal with this item is to allow a figure which will reflect the possibility of his incurring future expense of this type, on similar lines to the well-established approach to valuing loss of employment capacity: of such cases as *Smith v Manchester Corporation* (1974) 17 KIR 1 and *Moeliker v Reyrolle & Co Ltd* [1976] ICR 253.”

[40] I am satisfied that the Claimant is entitled to an award for future medical care which would include surgery to correct the deformities to his right leg. As previously stated, the Claimant has not provided further documentary evidence as to the cost of the surgery. The Court will, however, consider the

¹⁴ [2004] UKPC 19.

reasonableness of the figures proposed by Dr. Singh to make an appropriate award to the Claimant.

- [41] I accept that the Claimant may require some physiotherapy in the future, and further orthopaedic consultations especially in relation to future surgery. I am however not satisfied on the evidence before the Court that an award should be made to the Claimant to cover the frequency of sessions and consultations suggested by Dr. Singh.
- [42] Based on my observations above, I do not believe that it is possible to make a completely accurate and verifiable estimate of the future cost of medical care for the Claimant. The best that the Court can do based on my assessment of the evidence is to award a figure that will adequately cover the possibility of the Claimant incurring future medical expenses. In the circumstances, to cover the costs associated with future surgery on the Claimant's leg, and the possibility of further physiotherapy and consultation and for the purchase of a pair of orthotic shoes, I would make an award of EC\$170,000.00 to the Claimant for future medical expenses.

Special Damages

- [43] It is well established to be considered trite that special damages must be strictly pleaded, and proved. The learned authors of *Mc Gregor on Damages*¹⁵ state:-

“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.”

- [44] In his statement of claim, the Claimant pleaded special damages totaling the sum of \$4,337.46. At the start of the assessment of damages hearing, the Claimant sought and obtained the Court's permission, with no objection by the Defendant, to amend his statement of claim to claim further items of special damage amounting to \$7,500. Accordingly, the Claimant now seeks the total sum of \$13,332.46. The Claimant's claim for special damages is broken down as follows:

Ortho Medical Associates Receipt no. 1346	\$340.00
MSJMC dated 14.05.13 #110066	\$10.00

¹⁵ 18th Edition at 44-012.

MSJMC dated 07.06.13 #113201	\$25.00
MSJMC dated 17.04.13 #106751	\$9.34
MSJMC dated 18.07.13 #115583	\$20.00
MSJMC dated 25.06.13 #114368	\$150.00
MSJMC dated 14.05.13 #110069	\$40.00
MSJMC dated 24.07.13 #117894	\$20.00
MSJMC dated 29.08.13 #119750	\$20.00
MSJMC dated 17.04.13 #106744	\$125.00
Piper's Pharmacy	\$15.22
Cost of Ticket to Trinidad	\$1,461.70
West Shore Medical Radiology Services Ltd dated 08.06.15 #44477	\$230.35
West Shore dated 08.06.15 #2063	\$205.67
Cost of Accommodation at Rude Kaise 07.06.15	\$102.83
Cost of Medical report	\$1,557.35
Police Report dated 17.06.13	\$50.00
Medical Report dated 02.03.2023 #9306	\$1,450.00
Medical Report dated 03.03.2023 #9405	\$7,500.00
Total	\$13,332.46

- [45] The Claimant has provided receipts or paid invoices as evidence of these past expenses. I am satisfied that the Claimant has pleaded and proved each item of special damage claimed. I would therefore award the Claimant special damages in the sum of \$13,332.46.

Costs

- [46] The Claimant is entitled to prescribed costs in accordance with rule 65.5 of the Civil Procedure Rules (Revised Edition) 2023 and Part 65 of the Civil Procedure Rules (Revised Edition) 2023, appendices B and C.

Interest

[47] In calculating interest on the sums found payable to the Claimant, I am guided by the principles espoused in Terrance Amedee v Marcus Modeste¹⁶ and Martin Alphonso et al v Deodat Ramnath.¹⁷ Interest on general damages shall be calculated from the date of service of the claim on the Defendant to the date of this order at the rate of 5% per annum. Interest on special damages shall be calculated from the date each loss was incurred to the date of this Order at the rate of 2.5% per annum. No prejudgment interest shall be awarded for future medical expenses. Post judgment interest shall be at the statutory rate of 5% per annum.

[48] In light of the foregoing, the Defendant shall pay the Claimant the following:-

1. General damages for pain, suffering and loss of amenities in the sum of \$150,000.00 together with interest from the date of service of the claim to the date of this Order at the rate of 5% per annum.
2. The sum of \$170,000.00 for future medical care. No pre-judgment interest is awarded on this sum.
3. Special damages in the sum of \$13,332.46 together with interest from the date of each expense allowed to the date of this Order at the rate of 2.5% per annum.
4. Prescribed costs in accordance with rule 65.5 of the Civil Procedure Rules (Revised Edition) 2023 and Part 65 of the Civil Procedure Rules (Revised edition) 2023, appendices B and C.
5. Post judgment interest at the statutory rate of 5% per annum.

[49] I wish to thank learned Counsel for both Parties for their helpful submissions.

Carlos Cameron Michel
High Court Master

By the Court

¹⁶ SLUHCVP2022/0001 (delivered 9th November 2023, unreported).

¹⁷ (1997) 56 WIR 183.

Registrar