

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCv2024/0144
(FORMERLY CLAIM NO. ANUHCv2019/0027)

BETWEEN:

SHARON FINLAYSON

Claimant

and

OWEN JACOBS

Defendant

Appearances:

Ms. Denise Parillon, Counsel for the Claimant

Mr. George Looby IV, Counsel for the Defendant

2025: September 30th
October 1st .

ORAL DECISION

- [1] **MICHEL, M.:** On 13th October, 2017 the Claimant was a passenger in a motor vehicle which was involved in a collision ("**the Accident**") with another vehicle owned and driven by the Defendant. The Claimant sustained personal injuries as a result of the Accident and the driver of the vehicle in which she was a passenger died from injuries received in the Accident. The Claimant subsequently commenced these proceedings against the Defendant alleging that she suffered personal injuries, loss and damage as a result of the Accident, and that the Accident was caused by the negligence of the Defendant. The Claimant seeks general damages, special damages in the sum of \$1,841.20, interest and costs on her claim.
- [2] By consent order dated 8th February, 2024 the Claimant and the Defendant ("**the Parties**") consented to judgment on liability in favour of the Claimant against the Defendant with damages to be assessed by the Court. Accordingly, the issue of the Defendant's liability having been crystallised by the consent judgment, the only task remaining for the Court is to determine how much compensation is due to the Claimant based on the evidence she has adduced in support of her claim for special and general damages.

- [3] The Claimant filed a witness statement and written submissions for the assessment of damages. The Claimant also sought and obtained permission from the Court for Dr. Auriel Aaron and Dr. Maria Pereira, Dermatologist, to be deemed expert witnesses for the purpose of these proceedings and to file expert reports in accordance with Part 32 of the **Civil Procedure Rules (Revised Edition) 2023** (“**CPR 2023**”).
- [4] No witness statements nor written submissions were filed by the Defendant for the assessment of damages. Counsel for the Defendant made brief oral submissions to the Court. The assessment of damages therefore proceeded based on the evidence of the Claimant and the applicable law.
- [5] I will first consider the Claimant’s claim for general damages for pain, suffering and loss of amenities.

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
- [7] I will thus consider the Claimant’s claim for general damages based on the above principles.

The Nature and Extent of Injuries Suffered

- [8] The Claimant was born on 7th September 1969. She was 48 years old at the time of the accident on 13th October 2017 and is now 56 years old.
- [9] Following the Accident, the Claimant was admitted to the Mount St. John’s Medical Centre. The injuries she sustained in the Accident are set out in the expert reports of Dr. Aaron and Dr. Pereira.

Dr. Aaron’s Expert Report

- [10] In her expert report, Dr. Aaron stated that following the Accident, physical examination of the Claimant at the Hospital revealed a 4 cm laceration above the superior lip and a 4 cm laceration on the chin. The Claimant also had bruising on her left forearm and small abrasion in the left pretibial region. She was immobilized in a firm c-spine collar, which was removed after review of CT

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

images. Her neck had no swelling, no deformity, it was non-tender and had full range of motion. Dr. Aaron noted in the expert report that the Claimant was discharged from the Emergency Room following wound care and intravenous antibiotics. She stated that the Claimant was followed up in the surgical outpatient clinic department by her and Dr. S. Krishnan, Consultant General Surgeon, three days later with no new complaints or clinical deterioration.

Dr. Pereira's Expert Report

- [11] Dr. Pereira stated in her expert report that the Claimant was seen by her on 9th August, 2024 and 6th May, 2025. She stated that during her consultation with the Claimant, the Claimant complained of recurrent nightmares, flashbacks of the crash event and insomnia. Dr. Pereira further stated that the Claimant has loss of sensation of the tip of her tongue. She also noted that the Claimant complained of loss of confidence and anxiety, and stated that the Claimant experienced distress when dealing with staring eyes or questions about her facial scars from passers-by.
- [12] Dr. Pereira noted that upon physical examination, the Claimant's blood pressure was elevated and her pulse was normal. She had no fever or jaundice or enlarged lymph nodes. Her chest was clinically clear and she had a normal central nervous system.
- [13] Dr. Pereira stated that the physical injuries suffered by the Claimant were:-
- (i) 2 cm facial scar of left cheek
 - (ii) 2.5 cm scar of forehead
 - (iii) 1 cm scar of chin
 - (iv) 0.5 cm scar of upper lip
 - (v) 0.5 cm scar of left lower lip
 - (vi) Scar tissue under-surface of frenulum
 - (vii) Soft tissue post inflammatory hyperpigmentation of abdomen skin
- [14] I pause to note that the expert report of Dr. Aaron and the medical report issued by the Mount St. John's Medical Centre after the Accident noted the Claimant's injuries as being a 4 cm laceration above superior lip and 4 cm laceration on chin in addition to bruising on the left forearm and small abrasion on the left pretibial region.
- [15] Dr. Pereira further stated that the Claimant also suffers emotional distress as a result of the grief and emotional trauma due to the accident and loss of her friend.

- [16] Dr. Pereira assessed the Claimant's injuries as: (a) physical injuries – facial scars and abdominal hyperpigmentation and (b) emotional distress/post-traumatic stress disorder.
- [17] Dr. Pereira stated that the medical treatment that she would recommend for the Claimant is wound care for the facial scars, physical pain management, and referral to a counselor or therapist for emotional support.

The Nature and Gravity of the Resulting Physical Disability

- [18] Based on the expert evidence of Dr. Pereira, it appears that the Claimant has suffered facial scars and hyperpigmentation of the abdomen skin.

The Pain and Suffering Endured and Loss of Amenities Suffered

- [19] In her witness statement, the Claimant stated that among her other physical injuries previously outlined in the expert reports, since the Accident she has experienced reduced taste and sensation at the tip of her tongue, and pain and funny feeling from the scar tissue inside her mouth. She further stated that she suffered grief and emotional trauma and post-traumatic stress disorder.
- [20] The Claimant stated that after all these years, her face still has many ugly scars that make her very self-conscious and ashamed. She stated that they are a constant reminder of the accident and of the consequent death of her best friend, Novelette Brooks.

The Extent to which the Claimant's Pecuniary Prospects have been Affected

- [21] No evidence was presented to the Court that the injuries received by the Claimant have had any effect on her pecuniary prospects.

Discussion on General Damages

- [22] 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 endured and loss of amenities suffered. The Court must strive for consistency in its awards by using comparative cases tailored to the specific facts of the individual case.

- [23] 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”.
- [24] In considering the approach in arriving at an award for general damages, the guidance provided by Rawlins J in **Kathleen McNally v Eric Lotte and CITCO (BVI) Ltd.**,³ is instructive. Rawlins J stated that:-
- “The practice is to grant a global sum for general damages for pain and suffering and loss of amenities, considering these against the background of the nature and extent of the injuries sustained and the nature and gravity of the resulting impairment and physical disability.”
- [25] Learned Counsel for the Claimant has suggested an award to the Claimant of \$90,000.00 for pain, suffering and loss of amenities and \$70,000.00 for scarring and emotional distress/post-traumatic stress disorder. The Claimant relies on the case of **Mercedes Delplesche v Samuel Emmanuel De Roche**⁴ and the Judicial Studies Board Guidelines for the Assessment of General Damages in Personal Injuries Cases⁵ (“**JSB Guidelines**”) in support of her proposed awards.
- [26] The claimant in **Mercedes Delplesche** was struck down by a motor vehicle driven and owned by the defendant. She was 54 years old at the time of the accident and 57 years old at the time of the assessment of damages. As a result of the accident, she sustained the following injuries: trauma to head and left knee, abrasion to face, laceration to forehead, nose and lower lip; and bleeding from left nostril. The claimant’s medical report indicated that the claimant had improved but the accident left scars to her forehead and face. The claimant’s evidence at trial was that she suffered from severe pains in her lower back, head and knee which made it difficult for her to walk properly and stand for any long period.
- [27] The Court in **Mercedes Delplesche** did not consider the claimant’s injuries to be as serious as cases that had been referred to it, but it took into account that the claimant was carrying scars to her face and forehead from the lacerations sustained in the accident. The Court awarded the claimant general damages of \$65,000.00 for pain suffering and loss of amenities in 2013.

² [1998] 3 All ER 481.

³ BVIHCV2001/0068 (delivered 2nd July 2003, unreported).

⁴ St. Vincent and the Grenadines claim no. 41 of 2012 (delivered 19th April 2013, unreported).

⁵ 10th Edition.

- [28] As noted above, the Claimant in the present case also referred the Court to the JSB Guidelines. Under the rubric, facial disfigurement, for females with significant scarring, the JSB Guidelines suggest an award range of £11,800-£19,750 or EC\$42,716.00-\$71,495.00.⁶ For females with less significant scarring, the suggested range is £2,600-£9,000 or \$EC9,412.00 to \$32,580.00.
- [29] The Court must bear in mind that the JSB Guidelines are based on the United Kingdom, where the economic realities are different from the OECS Member States and Territories under the jurisdiction of the Eastern Caribbean Supreme Court. The Court must also bear in mind the guidance of the Court of Appeal in **Collin Hope Jr v Edmond Lake**⁷ where Webster JA [Ag.], delivering the judgment of the Court stated: ‘the Guidelines can be resorted to in appropriate cases but they should not be used in place of or to contradict local decisions that are applicable to the case being decided.’
- [30] The Court also notes the case of **Kimion Browne v Harry Gibson**⁸ (which referred to the decision in **Mercedes Delplesche**). The claimant in that case was riding his motorcycle when he was involved in a collision with the defendant’s motor vehicle. He sustained multiple injuries inclusive of head trauma, laceration to his forehead measuring 6 cm. He spent two days in the hospital. The Claimant made a fair recovery but experienced periodic headaches at varying intensity and had a permanent esthetical deformity in the region of the forehead where he received the laceration. On 10th March 2023, the Claimant was awarded \$28,000.00 in general damages for pain suffering and loss of amenities.
- [31] Considering the expert evidence and the Claimant’s evidence as placed before the Court as to injuries sustained by the Claimant in the Accident, I find that the most significant physical injury received by the Claimant were lacerations to her face. These lacerations have resulted in scarring to the Claimant’s face.
- [32] Having reviewed the photographs which accompanied the Claimant’s witness statement and having observed the Claimant at the assessment of damages hearing, and having observed the Claimant point to scarring above her mouth and on her chin, which can also be observed in the photographs accompanying her witness statement, and which is consistent with the expert evidence of Dr. Aaron, I do not consider the Claimant’s scarring to be severe. I thus consider her facial scarring to be on the less severe side, but noting that her scarring is still visible.

⁶ £1.00 = \$EC3.62.

⁷ ANUHCVP2020/0022 (delivered 23rd February 2022, unreported) at para. 6.

⁸ GDAHCV2019/0208 (delivered 10th March 2023, unreported).

- [33] I also accept the unchallenged evidence of Dr. Pereira that the Claimant has developed abdominal hyperpigmentation from the accident, although the extent of this was not detailed in the evidence before the Court.
- [34] The Claimant did not give an account of the physical pain and suffering experienced from the lacerations received in the accident, but the Claimant's evidence and that of Dr. Pereira is that she has lost some sensation at the tip of her tongue.
- [35] In relation to psychological or emotional injury, Dr. Pereira in her report assessed the Claimant's injuries as including Emotional Distress/Post Traumatic Stress Disorder. I am unable to attach much weight to Dr. Pereira's conclusion that the Claimant suffers from post-traumatic stress disorder. Dr. Pereira is a qualified medical doctor specializing in the field of dermatology and was deemed to be an expert to provide expert evidence in relation to her area of specialty, dermatology. The Claimant has not provided an expert report from a mental health professional to diagnose her with having the mental health condition of post-traumatic stress disorder.
- [36] I would however accept the Claimant's evidence that the scarring on her face following the accident would have had some psychological impact on her, making her feel self-conscious. I would also accept that that the Claimant would have suffered some trauma having been involved in a motor vehicle accident which resulted in injury to her and the death of a friend. I would therefore take these matters into account in making an appropriate award to the Claimant.
- [37] I note the Claimant's reliance on the case of **Mercedes Delplesche** which was outlined above. It is readily apparent having read the decision and the cases referred to in it that the award made to the claimant in that case was primarily based on the trauma to the claimant's head and knee although the Court did take into account the scarring to the claimant's face. The Claimant in the present case has no other significant physical injuries other than the scarring to her face resulting from lacerations to her face which would warrant an award in the range of \$65,000.00 made by the Court in **Mercedes Delplesche**.
- [38] As I previously stated, I considered the facial scarring received by the Claimant to be less severe, but on the higher end of that category. Considering the socio-economic differences between the United Kingdom and the OECS, the ranges in the JSB Guidelines would have to be appropriately discounted to better reflect the economic realities of the OECS.
- [39] Taking the above into account, considering the facial scarring and the abdominal hyperpigmentation the Claimant carries, the loss of sensation at the tip of her tongue and the obvious psychological distress she would have suffered after the

accident, comparing the facts of the present cases to other comparable cases from the OECS and considering the JSB Guidelines in relation to female facial scarring, and the care with which the Court must approach the guidelines, I am of the considered view that the sum of \$48,000.00 in general damages for pain, suffering and loss of amenities is fair compensation to the Claimant.

Special Damages

[40] 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.⁹ The learned authors of **McGregor on Damages**¹⁰ 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.”

[41] The Claimant pleaded the following particulars of special damage:-

(i) Police report	\$200.00
(ii) Mount St. John's Medical Centre Surgical User Fee	\$20.00
(iii) Medical Report	\$150.00
(iv) Loss of wages for period 13 th October 2017 to 2 nd November 2017	\$1,471.20
TOTAL	\$1,841.20

[42] The Claimant provided paid receipts for the police report, the Mount St. John's Medical Centre Surgical User fee and the medical report as pleaded in her statement of claim. I would therefore allow each of these expenses.

⁹ *Ikiw v Samuels and others* [1963] 1 W.L.R. 991; see also *Steadroy Matthews v Garna O'neal* BVIHCVAP2015/0019 (delivered 16th January 2018, unreported).

¹⁰ 18th Edition at 44-012.

[43] The Claimant also provided a letter from her employer, Epicurean Fine Foods & Pharmacy, dated 31st January, 2018 stating that she was issued sick leave from 13th October, 2017 to 3rd November, 2017 and that she missed salary payments totaling the sum of \$1,471.20 for this period. This letter from the Claimant's employer has not been challenged by the Defendant. I am satisfied that the Claimant has proved her loss of salary for the above period in the sum of \$1,471.20

[44] In light of the foregoing, I am satisfied that the Claimant has pleaded and proved special damages in the sum of \$1,841.20 and is entitled to an award in the amount.

Interest

[45] 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 **Alphonso v Ramnath**¹¹ and **Terrance Amedee v Marcus Modeste**.¹²

Costs

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

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

- (i) General damages for pain, suffering and loss of amenities in the sum of \$48,000.00 together with interest from the date of service of the claim on the Defendant to the date of this Order at the rate of 5% per annum.
- (ii) Special damages in the sum of \$1,841.20 together with interest from the date of each of the three expenses allowed (\$200.00 for a police report, \$20.00 for Mount St. John's Medical Centre Surgical User Fee and \$150.00 for a medical report) and from 2nd November, 2017 for loss of wages, to the date of this Order at the rate of 2.5% per annum.
- (iii) Post judgment interest at the statutory rate of 5% per annum.
- (iv) 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.

¹¹ (1997) 56 WIR 183.

¹² SLUHCVP2022/0001 (delivered 9th November 2023, unreported).

[48] I wish to thank learned Counsel on both sides for their assistance to the Court.

Carlos Cameron Michel
High Court Master

By the Court

Registrar