

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2021/0312

BETWEEN:

CHERYL JACKSON

Claimant

and

IRA BARRIERO

Defendant

Appearances:

Mr. Warren Cassell and Dr. David Dorsett, Counsel for the Claimant

Ms. Karen De Freitas-Rait, Counsel for the Defendant

2025: July 1st;
August 26th.

DECISION

- [1] **MICHEL, M.:** On 17th January, 2019 the Claimant was a passenger in a motor vehicle being driven by her husband when the Defendant, driving another motor vehicle, collided into the back of the vehicle in which the Claimant was a passenger, causing damage to the vehicle and injury to the Claimant.
- [2] The Claimant subsequently commenced the present proceedings against the Defendant by claim form and statement of claim filed on 12th August, 2021. In her claim, the Claimant alleged that the accident was caused by the negligence and/or breach of statutory duty of the Defendant and that as a result she has suffered pain, injury, loss and damage.
- [3] The Claimant pleaded the following as her particulars of injury:-
- (i) Intervertebral disc bulge in lower cervical spine;
 - (ii) Neuralgic pain radiating to her upper extremity with diminished sensation in ulna distribution of her both hands as a result of this injury;
 - (iii) Numbness and pain in neck.
 - (iv) Whiplash injury and disc bulge at level of C4/C5 with diminished sensation in ulnar distribution of right upper extremity including both little fingers;

(v) mild subluxation of T2 on T3 -likely haematoma T2/T3 decompression and fusion 15/01/2018;

- [4] The Claimant further pleaded that to date, she suffers severe pains and is no longer able to enjoy the amenities of life, including playing, exercising, swimming and having sexual intercourse. The Claimant appended two medical reports of Dr. K.K. Singh to her statement of claim in support of her claim.
- [5] In her statement of claim, the Claimant pleaded special damages in the sum of \$24,295.74. As a result of the pain, injury, loss and damage she allegedly suffered in the accident, the Claimant claimed as against the Defendant, damages (including general and special) for personal injuries and loss and damage sustained in the accident on 17th January, 2019 caused by the alleged negligence of the Defendant and/or breach of statutory duty under sections 19(2), 19(12)(a) of the Vehicle and Road Traffic Regulations. She further sought an inquiry as to any further damages due for the actions of the Defendant, costs and interest.
- [6] The Defendant failed to file a defence to the Claimant's claim within the time limited by the Civil Procedure Rules 2000 ("**CPR 2000**") and judgment in default of defence was entered for the Claimant against the Defendant for an amount to be decided by the Court. A subsequent application by the Defendant to set aside the default judgment was refused by the Court.
- [7] The issue of the Defendant's liability having been crystallized by the default 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. This position was made clear by the Court of Appeal in **Michael Laudat et al v Danny Ambo**¹ wherein Edwards JA opined:-

"Ordinarily, at an assessment of damages hearing the court would not enquire into matters of liability because the defendant, having failed to file an acknowledgment of service and/or a defence is taken to admit liability as pleaded. At the assessment of damages hearing, the court is not required to re-open the application or request for default judgment; and it would not be appropriate to go behind the default judgment order or assess the merits of the pleadings in relation to the cause of action while the default judgment stands. The issue of the defendant's liability having been settled by the default judgment, the only issue for the court is how much in compensatory damages is due to the claimant upon the evidence adduced by the claimant in proof of any special damages

¹ DOMHCVAP2010/0016 (delivered 15th December 2010, unreported) at para. 30.

claimed and general damages. Where damages for any pleaded causes of action have not been proven by the evidence, the claimant would generally not be entitled to damages under that head of claim.”

[8] The Claimant filed a witness statement for the assessment of damages and the Defendant filed a witness statement on his behalf and the witness statement of an additional witness, Anita Tobitt. The Claimant also sought and obtained permission of the Court pursuant to Part 32 of Civil Procedure Rules (Revised Edition) 2023 (“**CPR 2023**”) for Dr. K.K. Singh to be deemed an expert for the purpose of these proceedings. Dr. Singh produced an expert report in relation to the injuries sustained by the Claimant. Questions were put to Dr. Singh about his report in accordance with CPR 32.8 and he provided written responses to the questions.

[9] In the written submissions filed on behalf the Claimant, it was submitted that the Claimant was seeking to recover the following:-

- (1) General damages for pain, suffering and loss of amenities
- (2) Special damages including loss of earnings
- (3) Loss of earning capacity
- (4) Future medical care

Each of the above heads will be dealt with in turn in this decision.

[10] Counsel for the Defendant sought to raise and argue the issue of contributory negligence on the assessment of damages. This was vigorously opposed by Counsel for the Claimant. I shall discuss the issue of contributory negligence later in this decision.

[11] I will first consider the Claimant’s claim for general damages for pain, suffering and loss of amenities.

General Damages

[12] It is well settled in 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.²

The Nature and Extent of Injuries Suffered

² See *Cornilliac v St Louis* (1965) 7 WIR 491.

[13] The Claimant was born on 20th February, 1973. She was just shy of 46 years old on the date of the accident on 17th January, 2019 and is now 52 years old. The injuries she sustained in the accident are set out in the expert report of Dr. Singh filed on 14th October, 2024 together with the expert report of Dr. Singh filed on 4th April, 2025 providing answers to the written questions of the Defendant.

[14] The Claimant attended the Mount St. John's Medical Centre after the accident and was assessed by medical personnel there as having a whiplash injury. She was sent home with medication within a few hours after investigations and was advised to wear a neck brace/cervical collar. A little less than a month later, the Claimant visited Dr. Singh on 13th February, 2019. In a medical report prepared after examining the Claimant, Dr. Singh stated that an examination of the Claimant's skeletomuscular system confined to her cervical spine showed classical signs to conclude the following diagnosis:-

(i) Intervertebral disc bulge in lower cervical spine.

(ii) Neuralgic pain radiating to her upper extremity with diminished sensation in ulnar distribution of both her hands as a result of the injury.

Dr. Singh further stated that an MRI confirmed his clinical diagnosis of the Claimant.

[15] Dr. Singh concluded in his report that the motor vehicle accident resulted in the Claimant suffering a whiplash injury and disc bulge at the level of C4/C5 with diminished sensation in the ulnar distribution of right upper extremity including both little fingers. He stated that the Claimant further suffers with tingling and numbness of both upper extremities.

The Nature and Gravity of the Resulting Physical Disability

[16] In his February 2019 report, Dr. Singh noted that the Claimant still had temporary disability in the full functions of the upper extremity, however, her permanent physical impairment had been evaluated as per the "Guides to the evaluation of permanent impairment of American Medical Association" as 6% permanently disabled as a whole person. Dr. Singh further stated that the Claimant did not need any surgery at present because there were little signs of recovery on account of conservative lines of treatment but possibilities were that she may require surgery in future if her percentage of permanent physical impairment increases or her current level of abilities decreases. He stated that this percentage of permanent physical impairment will increase as the Claimant grows older on account of developing post traumatic degenerative joint disease.

- [17] In his answers to written questions put to him by the Defendant about his report, Dr. Singh stated that he had the opportunity to re-examine the Claimant with detailed neurological clinical evaluation on 12th February, 2025. He stated that the Claimant's current disabilities according to the re-evaluation on 12th February, 2025 still remained at 6% permanently disabled as a whole person and because of that there is no indication of surgical intervention at present but if the percentage of her permanent physical disability increases in the future or current abilities decrease in the future, the Claimant would require surgery.

The Pain and Suffering Endured

- [18] In her witness statement the Claimant stated that she is still on pain killers. She stated that she has not been able to continue her employment as a yacht cleaner or obtain alternative employment because she is in constant pain. She stated that the accident has altered her life and that she now lives a life of constant physical pain and that her pain and suffering, physical and mental are real.

The Loss of Amenities Suffered

- [19] The Claimant stated in her witness statement that many of the things she used to do and enjoy before the accident, she is no longer able to do, including, playing, exercising, swimming and having sexual intercourse. She stated that this has put a strain on her relationship with her husband. She stated that she used to be able to have fun with her son who was 12 years old at the time of filing her witness statement, she used to play with him, run around with him and have a good time with him, but now all of that has been lost because of the accident.
- [20] Dr. Singh did not directly address the Claimant's loss of amenities, but as noted, in his February 2019 report, he noted that the Claimant was temporarily disabled in the full functions of her upper extremities and was assessed as 6% disabled as a whole person.
- [21] The Claimant stated that before the accident she was able to do her hair herself but after the accident she had to engage persons to do her hair care, including to do things as simple as washing her hair. The Claimant also stated that she did her own laundry before the accident but could not do that anymore after the accident and had to have her clothes taken to the laundromat.

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

- [22] The Claimant stated that she used to work as a yacht cleaner for six months of the year before the accident but she has not been able to continue her employment as a yacht cleaner or to obtain alternative employment because

she is in constant pain. She stated that she has already lost six years of earnings.

[23] The Claimant amplified her witness statement at the assessment of damages hearing. She stated that she cannot work as she used to. She stated that before the accident she did interior cleaning, from roof to the floor, detailing and sanding, and prepared the yachts for the guests to come on. The Claimant stated that she has not done any cleaning work since the accident. She stated that she does nothing. She just stays at home.

[24] The Claimant's evidence as to her inability to work was challenged by counsel for the Defendant under cross-examination, but the Claimant maintained that she has not worked since the accident. I will return to this evidence later in my discussion on the Claimant's claim for past loss of income.

Discussion on General Damages for Pain, Suffering and Loss of Amenities

[25] 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.

[26] Lord Hope of Craighead in **Wells v Wells**³ 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".

[27] 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.**,⁴ 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."

[28] In his written submissions, Dr. David Dorsett, learned counsel for the Claimant, submitted that the Court should award the Claimant the sum of \$125,000.00 in

³ [1998] 3 All ER 481.

⁴ BVIHCV2001/0068 (delivered 2nd July 2003, unreported).

general damages for pain suffering and loss of amenities. Learned Counsel for the Claimant relied on the case of **Miriam Myers v Dickenson Bay Hotel Management Ltd DBA Sandals Antigua**⁵ to ground his submission of an award in this sum.

- [29] In **Miriam Myers**, the claimant suffered serious spinal injury in the area of her lower back. She suffered multiple levels of disc herniation at L3/L4 and L5/S1. She did not show signs of improvement in the year after the accident and it was recommended that surgery would be the only option for management. The claimant was assessed as 7% disabled. Up to 5 years after the accident she still had not shown signs of improvement and surgery was again recommended. The claimant was awarded general damages for pain suffering and loss of amenities in the sum of \$95,000.00.
- [30] In his written submissions, Dr. David Dorsett, learned Counsel for the Claimant submitted that taking into account inflation for nine (9) years (which he submitted at 5% per year) that would push an award of \$95,000.00 in 2016 to \$147,376.18 in 2025 ($\$95,000.00 \times 1.059$). Dr. Dorsett submitted that having regard to the slight differential in permanent disability (7% versus 6%), an award of \$125,000.00 for pain and suffering is proper.
- [31] Ms. Karen De Freitas-Rait, learned Counsel for the Defendant in her written submissions argued that the sum of \$125,000.00 sought by the Claimant for general damages for pain, suffering and loss of amenities is grossly inflated and inconsistent with legal precedent for the type of alleged injury sustained by the Claimant.
- [32] Learned Counsel for the Defendant commended the following cases to the Court for consideration of an award to the Claimant: **Martha Leblanc v Augustus Thomas et al**,⁶ **Anita Tobitt v Grand Royal Antiguan Beach Resort Ltd and Stanford Frederick**⁷ and **Giancarla Fritz v Michael Rodney**.⁸ Learned Counsel for the Defendant also relied on the Judicial Studies Board Guidelines for the Assessment of Damages in Personal Injury Cases 10th Edition (“**the JSB Guidelines**”) for the Court’s consideration. Ms. De Freitas-Rait submitted that in accordance with the JSB Guidelines, the Court is asked to find that the injury sustained by the Claimant is a minor to moderate neck injury of a whiplash nature and that as such the appropriate award for General Damages should be approximately £5,150.00 (approximately EC\$19,106.00), with appropriate discounting for any credibility issues of the Claimant.

⁵ ANUHCv2013/0231 (delivered 6th October 2016, unreported).

⁶ DOMHCv2009/0296 (delivered 6th July 2011, unreported).

⁷ ANUHCv2006/0026 (delivered 13th October 2010, unreported).

⁸ DOMHCv2021/0003 (delivered 3rd October 2022, unreported).

- [33] The claimant in **Martha Leblanc** sustained injuries in a motor vehicle accident. She suffered a traumatic disc prolapse of the C5-C6 cervical vertebrae. There was evidence from a medical doctor that this could possibly be corrected by surgery. The claimant experienced neck pain and the evidence of the doctor was that the pain would subsist. The only disability the claimant suffered was loss of ability in flexing her neck. There was no indication of her percentage of permanent disability. The Claimant was awarded the sum of \$16,000.00 for pain suffering and loss of amenities by the Court in 2011.
- [34] In **Antia Tobitt v Grand Royal Antiguan Beach Resort et al**, the claimant was a passenger on a bus driven by the ancillary defendant who had been hired by the defendant. The bus struck an object and caused it to bounce and skid off the road causing injuries to the claimant's back and neck. The claimant was diagnosed with lumbar inter-vertebral disc/lumbo-sacral disc with diminished sensation in the dermatome distribution of L5-S. Following an MRI it was determined that the radiological findings were consistent with central and left lateral disc herniation at L5/S1 with impingement of the thecal sac. Her final medical report concluded that she was 8% permanently disabled as a further increase in her permanent physical impairments and that she may require surgery in the future to maintain her current level of abilities. The claimant continued to experience severe pain, found it difficult to sit in an upright position for any extended period of time and was unable to perform everyday functions and her relationship broke down as she was unable to participate in sexual activity. She was awarded the sum of \$50,000.00 in general damages for pain, suffering and loss of amenities.
- [35] In **Giancarla Fritz v Michael Rodney**, the claimant suffered whiplash injury and degenerative thoracic spondylosis. The Court considered that the injury was not a serious injury. The claimant was awarded the sum of \$15,000.00 in general damages for pain, suffering and loss of amenities.
- [36] The Court was also assisted by the cases of **Bramble v Danny et al**⁹ and **Temicia Smith v Brian Dean et al**¹⁰ found in the **Eastern Caribbean Supreme Court Personal Injury Cases Digest 2000-2017**.
- [37] The claimant in **Bramble** was driving a vehicle when he was negligently struck by the first defendant. In addition to more minor injuries to his knee and lower back, he suffered severe whiplash to the lower spine and an aggravation of a pre-existing joint disease. At the time of the trial, his loin pain had subsided but significant hip pain remained. He experienced significant interference with his ability to drive and lost the ability to exercise and engage in other physical

⁹ Antigua and Barbuda High Court Civil Suit no. 160 of 199 (delivered 15th February 2004, unreported).

¹⁰ SVGHCV2013/0098 (delivered 25th August 2014, unreported).

activities such as softball and walks. He was awarded \$50,000.00 for pain suffering and loss amenities by the Court in 2004.

[38] In **Temicia Smith v Brian Dean et al** the claimant was passenger in a vehicle and was injured when a vehicle collided into the rear of the vehicle she was in. A vehicle owned by the second defendant violently struck the rear of another vehicle which in turn struck the rear of the vehicle in which the claimant was a passenger. The claimant suffered soft tissue injury and whiplash of the cervical spine. She was fitted with a neck collar and later diagnosed with loss of cervical lordosis, posterior annular of two intervertebral disc and posterior central disc protrusion. These injuries were likely to cause continued pain and the need surgical intervention later. The claimant continued to experience back and neck pains, tingling of the fingers and increasing weakness in her hands. The claimant suffered permanent disability and wore a neck brace permanently. She suffered from constant pain. She was unable to exercise and gave up her aspiration to become a nurse since she had to abandon her training course. Her subsequent pregnancy was very difficult and after the baby was born she was unable to lift the infant. Her sex and social life were affected. The Claimant's injuries were considered significant for a young person and would not augur well for the future as she was likely to have increased pain. The Claimant was awarded general damages for pain, suffering and loss of amenities in the sum of \$70,000.00 in 2017.

[39] Having considered the Claimant's injuries as outlined in the expert report, her complaints of pain and loss of amenities and having carefully reviewed the above cases, I am of the view that the award of \$125,000.00 submitted by the Claimant is out of scale. I also consider that the award of \$19,106.00 suggested by the Defendant is too low.

[40] In my view, the injuries received by the Claimant in **Miriam Myers** were more serious than the Claimant in the present case. Her assessed percentage of physical disability was slightly higher than the Claimant in the present case, but claimant's condition in **Miriam Myers** was worsening, warranting future surgical intervention, unlike the Claimant in the present case, who six years on from the accident has not shown any degeneration warranting surgery.

[41] To my mind, the awards in **Martha LeBlanc** and **Giancarla Fritz** are too low when compared to the injuries of the Claimant in the present case and when the circumstances of the present case are considered. However, I am of the view that the present case is strikingly similar to that of the **Temicia Smith** case and to some extent, the case of **Antia Tobitt**. In my view, an award to the Claimant ought to be in line with these cases, taking into account their vintage. It is noted that the claimant in **Temicia Smith** was quite young, only 17 years old at the time of the accident and would have to wear a neck brace permanently. The

Claimant in the present case was almost 46 years old at the time of the accident and there is no evidence that she has to continue wearing the neck brace. The award of \$70,000.00 made to the claimant in **Temicia Smith** was also made some eight years ago.

- [42] Taking the above into account, considering the seriousness of the Claimant's injuries and the affect it would have on her life as outlined her evidence and the evidence of the medical expert, comparing the facts of the present cases to other comparable cases from the OECS and the time that has elapsed since those awards were made, I am of the considered view that the sum of \$70,000.00 for pain, suffering and loss of amenities is fair compensation to the Claimant.

Special Damages

- [43] 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.¹¹ The learned authors of *Mc Gregor on Damages*¹² 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.”

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

- a) Physiotherapy fees \$600.00
- b) Loss of Salary @ \$13,824.00
US\$20.00 per hour for 8
hours per day and 8 days
per week for 3 months
each for 2018 and 2020
8 hours daily Monday to
Friday
- c) Expenses and \$2,936.65
incidentals (e.g. laundry

¹¹ *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).

¹² 18th Edition at 44-012.

and medical consultation
and neck brace)

d) CT Cervical Spine \$1,100.00

e) Travel to USA for \$3,471.09
medical (US\$1,258.59)

f) Medical Reports \$930.00

g) MRI Cervical Spine \$1,434.00

TOTAL EC\$24,295.74

Loss of Salary

[45] I will first deal with the Claimant's claim for loss of salary.

[46] The Claimant's evidence is that she has not worked since the accident. She stated that she previously worked doing yacht cleanings. This would involve scrubbing the yachts from top to bottom, detailing and sanding. The work was seasonal.

[47] The Defendant and his witness Anita Tobitt both gave evidence of seeing the Claimant working at various marinas since the accident. The Defendant testified that he has seen the Claimant working at the marina every season since the accident. The Defendant's witness Anita Tobitt also testified to seeing the Claimant cleaning people's homes in the Falmouth area.

[48] It was suggested to the Claimant under-cross-examination that she was at the marina working the day after the accident. The Claimant denied this. Learned Counsel for the Defendant also put the evidence of the Defendant and his witness Anita Tobitt to the Claimant that she has been seen working after the accident. The Claimant indicated that that was not the truth.

[49] In her statement of claim, the Claimant pleaded loss of salary in the total sum of \$13,824.00, presumably United States Dollars for the period "2018 and 2020". The accident occurred in 2019, therefore the Claimant could not be claiming loss of income for 2018. I can only assume that the reference to 2018 should have been 2019.

[50] Further, the Claimant pleaded her loss of salary at US\$20.00 per hour for 8 hours per day and 8 days per week. The reference to 8 days per week would also be incorrect as there are 7 days in a week.

[51] At paragraphs 15 and 16 of her witness statement the Claimant states the following:-

“[15] ...I used to do seasonal work as a yacht cleaner for six months of the year from November to May each year I used to work on different yachts. I would earn US\$20.00/hour, US\$160.00/ day, or US\$800.00 for a five-day work week. For 26 weeks a year, \$800.00/week my earnings would be US\$20,800.00 for a six-month season.

[16] I have not been able to continue my employment as a yacht cleaner or to obtain alternative employment because of I am constantly in pain. I have already lost six years of earnings. That is at least US\$124,800.00 (EC\$336,960.00) of lost earnings.”

[52] Attached to the Claimant’s claim form, and contained in her bundle of documents for the assessment were “time sheets” purportedly evidencing her earnings before the accident. I will return to this shortly.

[53] I first need to address the quantum of the Claimant’s claim for loss of earnings. The Claimant seeks to evidence by way of her witness statement, past loss of earnings of \$336,960.00. Her Counsel in his written submission also submitted that the Claimant has lost “seven years” of earnings from 2019 to 2025 for a total EC\$393,120.00, which is an even higher figure than what is stated by the Claimant in her witness statement.

[54] I must state at this juncture that the Claimant would only be able to recover as special damages the sum which she has properly pleaded and proved. A claimant must plead and particularise any item of special damages which represents out of pocket expenses or loss of earnings incurred prior to the trial and which is capable of substantially exact calculation. It has been held by our Court of Appeal¹³ that this requirement is not satisfied by production of documentary evidence in a list of documents or by service of a witness statement setting out evidence proposed to be adduced in support of claims or matters for which no pleading has been made. In **Carl Webster v Historic Beacon Point Anguilla Ltd. et al**¹⁴ Bennett JA [Ag.] stated the following:-

“From the foregoing it is clear that the principle, spelt out in **Ilkiw v Samuels and others** that a statement of case must be amended to bring the pleaded case in line with the evidence sought to be presented

¹³ Carl Webster v Historic Beacon Point Anguilla Ltd. et al AXAHCV2020/0020 (delivered 21st June 2023, unreported) at para. 19.

¹⁴ Ibid.

at trial continues to be applicable under the CPR. This is so even if that evidence had been set out in a witness statement. A witness statement is not a substitute for a statement of case; rather it serves to amplify or provide particulars or further particulars of the allegations set out in the statement of case. Failure to include a particular out of pocket expense or pre-trial loss of earnings in the schedule of special damages attached to the claim form or statement of case or to amend the statement of case to include particulars of a claim for such expense or loss in the schedule of special damages will disentitle a defaulting claimant from recovering the claimed sum.”

- [55] The Claimant has not pleaded nor particularized an additional loss of income beyond what is pleaded in her statement of claim. The duty of a claimant to plead special damages is not fulfilled by setting out in a witness statement additional losses a claimant wishes to recover. In the circumstances, the Claimant would have been required to amend her statement of claim to claim all the pre-trial losses she wished to recover. Accordingly, the Claimant would only be able to recover the pleaded sum of US\$13,824.00 for the period 2019 and 2020 if the Court is satisfied that the pleaded loss has been proved.

Whether the Claimant has proved Loss of Salary

- [56] The Claimant's evidence is that due to her injuries she sustained in the accident, she has been unable to work since the accident. As stated previously, this contention of the Claimant was challenged by learned Counsel for the Defendant under cross-examination and evidence was given by the Defendant and his witness Anita Tobitt to the contrary.
- [57] For the reasons set out below, I do not accept the Claimant's evidence that she has not worked since the accident.
- [58] I have read and carefully considered the medical reports of Dr. Singh compiled in February 2019 which comprised his expert report filed in these proceedings and a follow up medical report of Dr. Singh dated 12th November, 2019 which was appended to the Claimant's claim form. No where in these reports did Dr. Singh state that the Claimant was unable to work as a result of the injuries she sustained in the accident. It is in Dr. Singh's written answers to the written questions of the Defendant dated 12th February, 2025 that he first makes a recommendation as to the Claimant's ability to work. Dr. Singh stated:-

“The percentage of her disabilities increasing in future depends overall on her genetic inheritance, lifestyle, overall health, muscle strengthening and other external factors but currently, she is unfit to do manual labour thus I have recommended her to retire from cleaning jobs

of Yacht which requires bending forward and entering into small spaces in the yacht which may cause further damage to her cervical spine disc structure thus she has been recommended to find an alternative job of sedentary nature.”

- [59] This statement by Dr. Singh on 12th February, 2025 was then a current statement and the inference that I draw from his statement is that the Claimant had up to then been working cleaning yachts and Dr. Singh recommended that she retire from her jobs cleaning yachts which require her to bend forward and enter into small spaces in the yacht. Dr. Singh further recommended that the Claimant finds an alternative job of sedentary work, which again suggests that up to the making of the report the Claimant was still engaged in the work of yacht cleaning.
- [60] Further, I have also noted that to support her claim for lost wages, the Claimant appended to her claim form a copy of a “day worker timesheet” for the Claimant dated 25th January, 2019 for work on the Yacht SY Nikata. This timesheet also forms part of the Claimant’s bundle of documents. The “day worker timesheet” gives a daily rate of US\$20.000 and provides a breakdown of the hours worked each day and the total amount due for the date. The Claimant’s bundle of documents contained further “day worker timesheets” covering the period from 18th December, 2018 to 25th January, 2019.
- [61] What is noteworthy is that the timesheet dated 25th January, 2019 is in respect of 23rd, 24th and 25th January, 2019, which is for a period after the accident which occurred on 17th January, 2019. This stands in complete contradiction to the Claimant’s evidence that she did not work after the accident. Thus, the very documents that the Claimant relies on to substantiate her lost earnings show that she was working in the period after the accident. This undermines the Claimant’s credibility as a witness.
- [62] Having had the opportunity to observe the Claimant give evidence under cross-examination, and having considered all the evidence before the Court, I simply did not form the view that the Claimant had not been working in the six years since the accident. I found it to be incredulous and contradicted by the evidence.
- [63] The Claimant in my view has not proved on to the Court on a balance of probabilities, the loss of income she claimed as I do not accept her evidence that she had not worked after the accident. I have found that her evidence that she did not work after the accident not to be credible. I am therefore unable to make any award to the Claimant for past loss of income.

Other Pleaded Items of Special Damage

[64] Learned Counsel for the Defendant, Ms. De Freitas-Rait, submitted that the following amounts totaling \$6,632.85 in respect of the Claimant's claim for special damages have already been paid to the Claimant by People's Insurance Company Ltd ("**PIC**"):-

- (1) The sum of \$4,152.75 by cheque number 016650 dated 19th March, 2019 payable to the Claimant as reimbursement for the costs of an MRI and a medical report from Mount St. John's Medical Center, a CT Scan from Belmont Clinic and sundry doctors' visits.
- (2) The sum of \$1,180.85 by cheque number 016955 dated 26 June, 2019 payable to the Claimant as reimbursement for the cost of various physical therapist visits and sundry pharmacy expenses.
- (3) The sum of \$1,299.25 by cheque number 017001 dated 9th July, 2019 payable to Mount St. John's Medical Center as payment of Invoice # 776598 in respect of treatment rendered to the Claimant.

[65] All three of these cheques were part of the Defendant's bundle of documents for the assessment of damages.

[66] Under cross-examination of the Claimant, it was clarified that PIC are the insurers for the Defendant, and these payments were therefore made by the Defendant's insurer to the Claimant following the accident.

[67] Under further cross examination by learned Counsel for the Defendant, the Claimant confirmed that she received a cheque for \$4,152.75, and a cheque for \$1,180.85. The Claimant's further evidence under-cross examination was that the Defendant's insurer was to deal with her medical expenses at the Mount St. John's Medical Centre. A third cheque in the Claimant's bundle of documents in sum of \$1,299.25 represented payment for medical expenses at the Mt. St. John's Medical Centre.

[68] Based on the evidence before the Court and the accepted payments by the Defendant's insurer to the Claimant, I am satisfied that the sums claimed by the Claimant for Physiotherapy fees, CT Cervical Spine, Medical Reports and MRI Cervical Spine has already been paid by the Defendant's insurer. This leaves the claimant's claim for travel to the United States of America and her claim for expenses and incidentals.

[69] The Claimant seeks to recover the sum of \$3,471.09 as special damage for travel to the United States of America "for medical". The Claimant does not

evidence this expense or explain how it is connected to her claim. No mention of this alleged pretrial expense is made in her witness statement. The only mention of travel to the United States of America “for medical” that I was able to find among the documents before the Court was in the medical report of Dr. Singh dated 17th November, 2019 where it was stated:-

“Ms. Cheryl Jackson had series [sic] of physical therapy in the month of May and June 2019 in our regional orthopaedic clinic followed [sic] she had some treatment done in Washington DC.”

[70] Again, no explanation has been provided as to what the treatment in the United States was for or whether it was related to her injuries from the accident on 17th January, 2019. The Court has not been furnished with any details about this trip nor has documentary evidence been provided to support the sum claimed for this trip. In the circumstances I am not satisfied that the Claimant has proved this item of special damage.

[71] The last item in the Claimant’s pleaded special damages is expenses and incidentals (e.g. laundry and medical consultation and neck brace) in the sum of \$2,936.65. The Claimant does not give a precise breakdown of these items. In her witness statement, the Claimant stated that she used to be able to wash her clothes, but she could not do so anymore after the accident and had to take her clothes to a laundromat to have them cleaned. She exhibited a receipt for \$374.40 for laundry expenses. I am minded to make this modest award to the Claimant for laundry as I am satisfied based on the medical evidence before the Court that it was likely that she face some difficulty doing laundry following the accident. Whilst each additional expense may not be particularised, I am satisfied that the sums claimed would be reasonable for miscellaneous expenses after the accident.

[72] I would therefore award the sum of \$2,936.65 to the Claimant for expenses and incidentals, however, this sum should be less the difference between the \$600.00 the Claimant claimed for physiotherapy and the \$1,180.85 paid by the Defendant’s insurer for physical therapy visits and sundry pharmacy expenses. I would therefore award the Claimant the sum of \$2,355.80 for expenses and incidentals.

[73] All further sums sought to be recovered by the Claimant by way of her witness statement were not pleaded in her statement of claim. Much was made by both Parties of sums sought to be recovered by the Claimant for hair care. The Claimant stated in her witness statement that she used to be able to do her hair by herself but after the accident, she had to engage persons to do her hair care, She provided receipts totaling \$4,750.00 for hair care as evidence of her loss for hair care. For reasons which I have already explained at paragraphs 54 and

55 above, the Claimant's failure to plead this item of special damage means that she is unable to recover this sum.

- [74] The Claimant suffers the same fate for the other items of loss she sought to evidence in her witness statement but which were not pleaded.

Loss of Earnings

- [75] Learned Counsel for the Claimant submitted that an award of \$429,725.09 should be made to the Claimant for loss of earning capacity. Learned Counsel for the Claimant submitted that in calculating loss of earning capacity, as per **Steadroy Matthews v Gara O'Neal**¹⁵, the starting point for calculation of the multiplier will be 27th May, 2025 when the Claimant gives her evidence for the assessment of damages trial (the assessment of damages in fact took place on 1st July, 2025). Learned Counsel for the Claimant further submitted that the date of assessment to retirement (taken to be 65 years) is 12 years, 8 months, and 24 days – which is an undiscounted multiplier of 12.753. Learned Counsel further submitted that this amount discounted at the 40% rate proposed in **Steadroy Matthews v Gara O'Neal**¹⁶ gives a discounted multiplier of 7.6518. This discounted multiplier of 7.6518 times \$56,160.00 results in loss of earnings of \$429,725.09.
- [76] Had the Court found that the Claimant has not worked since the accident as had been contended by the Claimant, I would have disagreed with Counsel for the Claimant that an appropriate award to the Claimant in respect of future earnings would be loss of earning capacity. An award for loss of earning capacity, often called a **Smith v Manchester**¹⁷ award, contemplates a claimant being in regular employment, but with an injury from an accident which puts them at a disadvantage on the open labour market should they lose their present employment.
- [77] Counsel for the Claimant however seemed to be submitting that the Claimant should be made an award for loss of future earnings rather than loss of earning capacity. In any event, the proposed figure by Counsel for the Claimant would have to be discounted much further because the medical evidence before the Court does not indicate that the Claimant is not able to work. It is that the nature of the job cleaning yachts is unsuitable but she can engage in more sedentary employment. An award for loss of future earnings therefore would have to account for any short fall in earnings resulting from her injury.

¹⁵ (2018) 92 WIR 374.

¹⁷ (1974) 17 KIR 1

- [78] I have already stated that I am not satisfied, on a balance of probabilities based on the evidence before the Court and having heard and observed the Claimant give evidence at the assessment of damages hearing, that the Claimant has not been working since the accident as a result of the injuries she sustained. I however accept the evidence of Dr. Singh that the Claimant should retire from doing yacht cleaning work which involves bending into small spaces. I also accept the evidence of Dr. Singh that the Claimant can be gainfully employed in more sedentary work.
- [79] It is clear to me based on the evidence before the Court that the Claimant, whilst she may still be working, as I have found, will be at a disadvantage on the labour market due to her injury if she has to give up cleaning on yachts as recommended by Dr. Singh. Ordinarily, in such circumstances, a **Smith v Manchester** award would be appropriate. As matters have unfolded, it is now difficult to determine the Claimant's present work arrangements and her present earnings as this evidence has not been placed before the Court.
- [80] The principles in **Smith v Manchester City Council** were discussed in the later case of **Moeliker v A Reyrolle and Co Ltd**.¹⁸ The principles set out in the case is that the Court may only make an award for loss of earning capacity if there is a substantial or real risk that the Claimant will lose their present employment at some time before the established end of their working life and if there is such a risk, the court should assess such risk in making an award considering the facts which will or may affect the Claimant's chances of getting a job at all or an equally well-paying job if the risk materializes. These principles were considered and approved by the Court of Appeal in **Martin Alphonso et al v Deodat Ramnath**.¹⁹
- [81] The Court does not have sufficient evidence as to the Claimant's present working arrangements, but it is clear that she has been advised to retire from the work activities she was engaged in doing yacht cleanings. Based on the expert evidence, the Claimant is still able to work. The Claimant will have to seek alternative employment where she will be handicapped on the labour market due to her injuries.
- [82] I do not consider that I can properly approach an award of loss of earning capacity to the Claimant employing the multiplier-multiplicand method. Firstly, the Claimant only placed before the Court a snapshot of earnings over a two month period from December 2018 to January 2019. There is no evidence of what her more recent earnings have been as this was not the case being made by the Claimant. Secondly, the very nature of the Claimant's employment

¹⁸ [1977] 1 All ER 9.

¹⁹ [1997] 56 WIR 183.

cleaning yachts is seasonal. It is thus difficult to predict a pattern of her future earnings. In my view, an appropriate award to make to the Claimant would be along the lines of a Blamire award based on the principles from the case of **Blamire v South Cumbria Health Authority**.

[83] This award was explained by Michel JA in **Steadroy Matthews** as follows:-

“[49] In the case of **Blamire v South Cumbria Health Authority**¹¹, the English Court of Appeal held that the trial judge was entitled to reject the multiplier-multiplicand approach in assessing the injured party’s future loss of earnings, given the number of uncertainties in that case as to the amount the injured party would have earned if she had not been injured, as well as the likely future pattern of her earnings. The judge accordingly decided, and the Court of Appeal upheld his decision, to award a global sum for loss of future earnings.

[84] Given the circumstances of this case, I am of the considered view that a global award to the Claimant for loss of future earnings is more appropriate. This is a similar approach taken by the courts in **Mary Joseph v Asha Hill et al**²⁰ and **David Moore v Hutchinson Construction Company Limited**.²¹

[85] I have considered what evidence is actually before the Court in relation to the Claimant’s past earnings doing yacht cleanings. The Claimant appears to have been engaged in low skill employment, albeit lucrative and any future employment is likely to be of a similar low skill nature, but with no guarantee of being as lucrative. She is presently 52 years old and has approximately 12 and a half years of working life remaining. Given that the Claimant has been advised by a medical expert to retire from yacht cleaning services, and recommended employment in a more sedentary job due to her injuries, any award to the Claimant is meant to compensate her for loss in her future earnings in different employment on account of the injuries she sustained. Doing the best I can with what is before me, I am of the considered view that an award of \$120,000.00 for loss of future earnings is fair compensation to the Claimant, bearing in mind that the Claimant is capable of seeking other employment.

Future Medical Care

[86] Learned Counsel for the Claimant submitted that Dr. Singh has indicated that the Claimant may require surgery which is presently estimated at US\$20,000 to US\$25,000.00 (EC\$54,000 to \$67,500.00). The Claimant accordingly seeks an award of \$67,500.00 for future medical care.

²⁰ DOMHCV2014/0192 (delivered 1st December 2015, unreported) at para. 19.

²¹ SVGHCV2015/0108 (delivered 7th June 2018, unreported) at para. 27.

- [87] In Dr. Singh's February 2019 medical report which forms part of his expert report filed in these proceedings, Dr. Singh stated that the Claimant did not need any surgery at present because there were little signs of recovery on account of conservative lines of treatment but possibilities were that she may require surgery in future if her percentage of permanent physical impairment increases or her current level of abilities decreases.
- [88] In his report providing answers to the written questions of the Defendant about his expert report, Dr. Singh stated that he had the opportunity to re-examine the Claimant with detailed neurological clinical evaluation on 12th February, 2025. He stated that the Claimant's current disabilities according to the re-evaluation on 12th February, 2025 still remained 6% permanently disabled as a whole person and because of that there is no indication of surgical inference at present but if the percentage of permanent physical disability increases in the future or current abilities decrease in the future the Claimant would require surgery.
- [89] It is clear from Dr. Singh's expert evidence that the Claimant does not presently require surgery and his opinion that the Claimant does not require surgery has not changed in the six year period from 2019 to 2025. It is further noted that the Claimant has not given evidence of an intention or desire to undergo surgery in the future.
- [90] The case of **Peter Robets v Damien Benjamin**²² is instructive in this regard. In that case, the master carrying out the assessment of damages, referring to the Court of Appeal's decision in **Francis v Martin**,²³ stated:-
- “The Court taking cognizance of the medical evidence also notes that the Claimant has not undergone the procedure neither has he indicated an intention to do so. The authority of Francis v Martin Claim Number BVIHCAP 2009/007 is instructive in such cases in determining whether an award for such damages is prudent. In that case 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.”
- [91] More recently, in the case of **Jameson Mannix and Osaze Mannix v Hamish Anthony**,²⁴ Williams J disallowed a claim for future surgery where the expert

²² ANUHCv2019f0072 (delivered 11th February 2020, unreported).

²³ BVIHCAP2009/007.

²⁴ ANUHCv2020/0219 consolidated with ANUHCv2020/0220 (delivered 27th January 2025, unreported) at para. 38.

medical report merely stated, as in the present case, that the claimant may require surgery in the future.

- [92] In light of the foregoing, I am not inclined to make an award to the Claimant for future surgery.

Contributory Negligence

- [93] The law on contributory negligence is well settled. In **Martin Alphonso and Others v Deodat Ramnath**,²⁵ a case involving an accident between a motor vehicle and a cyclist, Satrohan Singh JA stated:-

“It is accepted that the guiding principle in proving contributory negligence is whether the respondent by his acts or omissions contributed to his injuries, in the sense that he failed to take reasonable care for his own safety taking into account, as he must, that other users of the road are likely to be negligent. It is also a very salutary principle that, when one man by his negligence puts another in a position of difficulty, the court ought to be slow to find that other man negligent merely because he may have failed to do something which, looking back on it afterwards, might possibly have reduced the amount of damage. Contributory negligence did not depend on a breach of duty to the first appellant but on lack of care by the respondent for his own safety. Although contributory negligence does not depend on duty of care, it does depend on foreseeability. Just as actionable negligence requires foreseeability of harm to others, so contributory negligence requires foreseeability to oneself.”

- [94] Mrs. De Freitas-Rait, learned Counsel for the Defendant, invited the Court to consider the evidence led by and on behalf of the Defendant in relation to contributory negligence. She submitted that there is evidence from the Defendant that the driver of the vehicle in which the Claimant was a passenger exited the flow of traffic and then suddenly attempted to re-enter the flow of traffic without due care and attention. She further submitted there is evidence that the Claimant was not wearing a seatbelt at the time of the accident. Mrs. De Freitas-Rait submitted that any award to the Claimant ought to be reduced by 50% on account of the contributory negligence of the driver of the vehicle in which the Claimant was a passenger and on account of the Claimant being unrestrained when the accident occurred, thus contributing to her injuries.

²⁵ British Virgin Islands Civil Appeal No. 1 of 1996 (delivered 21st July 1997, unreported).

- [95] Mr. Cassell, learned Counsel for the Claimant, strenuously opposed the Defendant trying to raise the issue of contributory negligence on the assessment of damages following the entry of default judgment for the Claimant. He submitted in essence that the issue of liability is closed and cannot now be challenged by the Defendant. Mr. Cassell also filed closing submissions to address this issue which were considered by the Court.
- [96] In the written submissions previously filed by Dr. David Dorsett on behalf of the Claimant, it was submitted that the Claimant obtained a default judgment against the Defendant which judgment has not been set aside. Accordingly, he submitted, the Defendant cannot dispute liability at the assessment hearing and the issue of liability is *res judicata*. Counsel relied on the judgment of the Judicial Committee of the Privy Council in **Strachan v Gleaner Co Ltd**²⁶ in support of this submission. Dr. Dorsett submitted that the Defendant can challenge quantum, but he cannot “go behind the issues which that default judgment could be taken as having determined.”²⁷ Thirdly, he submitted that among other things, the issues determined by the default judgment was that (1) the Claimant was injured by the accident and (2) there was no contributory negligence. Learned Counsel for the Defendant submitted that the Defendant by the witness statements issued on his behalf seeks to litigate these same issues that are now *res judicata*. This, Counsel submitted is not permissible and constitutes an abuse of process. Counsel relies on **Symes v St Georges Healthcare NHS Trust**²⁸ for this submission. He further submitted that if an abuse of process, then the Defendant’s witness statements should be struck out.

Can Contributory Negligence be raised on an Assessment of Damages following the Entry of Default Judgment?

- [97] As stated at the opening of this decision, it is well settled by the Court of Appeal that on an assessment of damages following the entry of default judgment the only issue for the Court to determine is how much in compensatory damages is due to the Claimant based upon the evidence adduced by a Claimant in proof of the special and general damages claimed.²⁹ However, all matters that go to quantification of those damages are open to a defendant to challenge on the assessment of damages in so far as any such challenge is not inconsistent with the issue of liability concluded by the default judgment.

²⁶ [2005] UKPC 33, 66 WIR 268 at para. 16.

²⁷ See: *Symes v St Georges Healthcare NHS Trust* [2014] EWHC 2505 (QB), 140 BMLR 171 at para. 41 to 46.

²⁸ *Ibid* at para. 57

²⁹ See *Michael Laudat v Danny Ambo et al.*

[98] In **Bonny Alexander v Stanislaus Smith et al**³⁰ the claimant was a passenger in a motor vehicle and had not been wearing a seatbelt when the 2nd defendant collided with the motor vehicle resulting in the claimant suffering personal injuries. The claimant objected to the issue of contributory negligence being raised at the assessment of damages on account of him not wearing a seatbelt at the time of the accident. The Court noted:-

“A default judgment is conclusive on the issue of liability of the defendants as pleaded in the statement of claim but not necessarily conclusive on the issue of damages. It is open to the defendant at the assessment of damages to advance a causation objection, failure to mitigate loss or contributory negligence.”

[99] This pronouncement is supported by the judgment of the Court of Appeal in **Keith Claudius Mitchell (Minister of Finance in the Government of Grenada) v The Attorney General of Grenada**³¹ which was referred to by the Court in **Bonny Alexander**. In **Keith Claudius Mitchell**, the Court of Appeal had to consider whether the Master in the court below erred in her determination of what matters had been concluded by a default judgment. Blenman JA, delivering the judgment of the Court of Appeal provided guidance on the proper approach of the Court at the assessment of damages:-

“[36] Turning to the default judgment, I agree that it is incumbent on the judicial officer at the assessment hearing based on a default judgment to scrutinise the pleadings in order to determine what the default judgment represents. I have no doubt that as a general rule the default judgment does not represent a decision that all of the loss or damage alleged by the claimant was indeed suffered by him or attributable to the defendant; authority for this proposition is **Lunnun v Singh** read together with **Kok Hoong v Leong Cheong Kweng Mines Ltd**.

[37] The Court in **Lunnan v Singh** highlighted that on an assessment of damages all questions going to quantification of damage, including the question of causation in relation to particular heads of loss claimed by the claimant, remain open and could be raised by the defendant provided that they are not inconsistent with liability alleged in the statement of claim. Further, in **Kok Hoong v Leong Cheong Kweng Mines Ltd** the Court held that default judgments, though capable of giving rise to estoppels, must always be scrutinised with extreme particularity for the purpose of ascertaining the bare essence of what

³⁰ SLUHCv2017/0280 (delivered 9th March 2018, unreported).

³¹ GDAHCvAP2015/0034 (delivered 22nd September 2017, unreported).

they must necessarily have decided and they can estop only for what must “necessarily, and with complete precision” have been thereby determined.

- [100] Considering the foregoing, I have no doubt that contributory negligence can be raised on an assessment of damages as the issue is one that goes to quantum of damages, the question however is whether the issue properly arises on the present assessment.
- [101] Examining the Claimant’s statement of claim, it was clearly her case that the accident which resulted in her injuries was caused by the Defendant. In my view, the issue of the cause of the accident is settled by the default judgment and cannot now be disputed by the Defendant on the assessment of damages.
- [102] The issue of the Claimant being an unrestrained passenger when the accident occurred however, in my view, can properly be raised on the assessment of damages as it raises the question of whether the Claimant’s own actions, by failing to wear a seatbelt, contributed to the damage she suffered in the accident. The Defendant however would have had to lead evidence that had the Claimant been wearing her seatbelt, her injuries would have been less severe.
- [103] The previously mentioned case of **Bonny Alexander** was appealed to the Court of Appeal³² on the ground that the learned Master in the court below erred in reducing the award of damages to the claimant on assessment of damages following a default judgment on account of him not wearing a seatbelt at the time of the accident. It is noteworthy that no issue was made in the appeal about contributory negligence being raised on the assessment of damages following the entry of judgment in default of defence for the claimant. The Court of Appeal however allowed the appeal against the master’s order discounting the award of damages for pain, suffering and loss of amenities by 15% and reinstated her award of damages without any discount/diminution. The reasons for the Court of Appeal decision as found in the digest of the decision was as follows:-

“The Court, having considered all of the cases submitted by both sides, found that the common thread running through all of them is that there has to be evidence on the basis of which the court can make a determination of the impact of wearing or not wearing the seatbelt on any injuries sustained by a party. In ***Froom v Butcher [1976] QB 286***, a case which both parties referred to, the judgment of Lord Denning is very clear that as much as one might take the view that if you do not wear a seatbelt, then any injury might be exacerbated by that. However,

³² SLUHCVP2018/0016 Bonny Alexander v Stanislaus James et al (delivered 11th March 2020, unreported).

that is not a basis upon which a court can make a finding of contributory negligence. There must be evidence from an expert witness to say that some additional injury would have been sustained by failure to wear the seatbelt.

In these circumstances, there being no evidence at all whether from an expert or otherwise upon which the court could make a finding of contributory negligence, this Court was of the view that the order made by the learned master reducing the damages awarded to the claimant by 15% on the basis of a finding by her that the claimant not wearing a seatbelt contributed to the extent of the injuries sustained cannot stand. Accordingly, there was no proper evidential basis on which the master could have arrived at the determination that she did.”

- [104] In the present case, the Claimant accepted under-cross examination that she was not wearing her seatbelt at the time of the accident. However, no expert evidence has been led as to demonstrate that some additional injury was occasioned to the Claimant by her failure to wear a seat belt. In the circumstances there is no evidential basis to find that the Claimant contributed to her injuries by not wearing a seatbelt and discount any award to the Claimant accordingly. I therefore refrain from doing so and no discount will be applied to the awards made to the Claimant.

Interest

- [105] The Claimant is awarded interest on their 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**³³ and **Terrance Amedee v Marcus Modeste**.³⁴

Costs

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

- [107] In light of the forgoing, the Defendant shall pay the Claimant the following:-

1. General damages for pain, suffering and loss of amenities in the sum of \$70,000.00 together with interest from the date of service of

³³ (1997) 56 WIR 183.

³⁴ SLUHCVAP2022/0001 (delivered 9th November 2023, unreported).

the claim on the Defendant to the date of this Order at the rate of 5% per annum.

2. Special damages in the sum of \$2,355.80 together with interest from the date of the accident to the date of this Order at the rate of 2.5% per annum.
3. General damages for loss of future earnings in the sum of \$120,000.00. No pre-judgment interest is awarded on this sum.
4. Post judgment interest at the statutory rate of 5% per annum.
5. 60% of 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.

[108] 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