

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

GRENADA

CLAIM NO. GDAHCV2024/0015

BETWEEN:

ASHWNA BELLE

Claimant

and

JOHN MARSHALL

Defendant

Appearances:

Ms. Sheriba Lewis for the Claimant

Mr. Andre Thomas for the Defendant

2025: May 19;
August 8

DECISION ON ASSESSMENT OF DAMAGES

[1] **MICHEL M:** The Claimant and the Defendant were previously in a relationship. On 18th October 2020, whilst the Claimant was visiting a friend at their private residence ("the private residence"), the Defendant entered the private residence and physically assaulted the Claimant. As a result of the assault, the Claimant suffered personal injuries. The Defendant also damaged the Claimant's motor vehicle which was parked outside the private residence.

[2] The Claimant subsequently commenced the present proceedings against the Defendant. The Claimant alleged in her claim, *inter alia*, that the Defendant assaulted her by slapping her in the face, punching her in her mouth, choking her and biting her face, resulting in grievous bodily harm. The Claimant further alleged that as a result of the Defendant's assault, she sustained dental

fractures to her upper right central incisor, upper left central incisor and to her upper left lateral incisor, psychological and physical trauma, pain and discomfort. The Claimant therefore seeks general and special damages for the alleged personal injuries, loss and damage allegedly caused to her by the Defendant.

- [3] The Defendant filed a defence to the Claimant's claim in which he admitted entering the private residence without the consent of the Claimant's friend and admitted assaulting the Claimant by slapping her in her face and by biting her causing her to sustain injuries; however, the Defendant denied that he punched the Claimant in the mouth and denied that he choked the Claimant.
- [4] Following mediation, the Parties consented to judgment on liability being entered for the Claimant against the Defendant with damages to be assessed by the Court. The matter now comes on for assessment of damages.
- [5] The issue of the Defendant's liability having been concluded by the consent judgment, the only issue for the Court to determine on this assessment is how much in compensatory damages is due to the Claimant based upon the evidence she has adduced in proof of the special and general damages she has claimed. All matters that go to quantification of damages were open to the Defendant to challenge on the assessment of damages in so far as any such challenge was not inconsistent with the issue of liability concluded by the judgment by consent.
- [6] The Claimant filed a witness statement in support of the assessment of damages as well as written submissions. The Defendant also filed a witness statement and written submissions. The Claimant sought and obtained the permission of the Court for Dr. Vibart R.G. Yaw, General Dental Practitioner and Orthodontist and Dr. Lisnell Diaz, General Dentist specialized in Oral Surgery and Implantology, to be appointed as expert witnesses and to file expert reports for the purpose of the assessment of damages in relation to the Claimant's dental care. The reports were filed, and written questions were put to the experts by the Defendant about their reports and answers were provided which were

treated as part of the reports pursuant to rule 32.8(3) of the **Civil Procedure Rules (Revised Edition) 2023** ("CPR 2023").

The Assault

- [7] There is a dispute between the Parties as to how the Defendant assaulted the Claimant. This is an important issue to resolve as it can potentially impact the Court's findings on the injuries allegedly received by the Claimant from the Defendant's physical assault.
- [8] The Claimant's evidence in her witness statement based on her pleaded case is that the Defendant broke through the front door of the private residence informing her that he wanted his phone. She stated that she informed the Defendant that he had broken her phone a few weeks ago and that the phone he had given her was agreed by him to be the replacement. She stated that the next thing she knew, the Defendant, without warning, swung and **punched** her in the mouth. She stated that her friend exited from the bathroom where he had been, and the Defendant started to shout at him, and they argued. The Claimant then stated that the Defendant proceeded to **slap** her again. The Claimant stated that she was in shock and noticed that her tooth had broken and was bleeding. She stated that she proceeded to the bathroom to try to stop the bleeding and the Defendant followed and then proceeded to choke her against the wall in the bathroom and bit her face.
- [9] Under cross-examination, learned counsel for the Defendant suggested to the Claimant that it was not true that the Defendant punched her in the face. He suggested to the Claimant that the Defendant slapped her but did not punch her. The Claimant, however, was resolute that the Defendant punched her in the face.
- [10] In his witness statement, the Defendant admitted that he entered the private residence of the Claimant's friend on 18th October 2020 without the permission of the Claimant's friend and while inside the residence he assaulted the Claimant. The Defendant stated that he assaulted the Claimant by slapping her in her face, and by biting her, causing her to sustain injuries. He stated, however,

that these are the only two physical acts he committed against the Claimant's person.

- [11] The Defendant also admitted that he was charged with the offence of grievous harm, unlawful entry, assault and damage to property and that he pleaded guilty to the charges at the Magistrate Court and was sentenced on 2nd June 2022. The Defendant stated that he was aware that his actions caused injuries to the Claimant but contended that it was not to the degree and extent that the Claimant alleges.
- [12] Under cross-examination by learned counsel for the Claimant, the Defendant further admitted that he also caused damage to the Claimant's car that was situated outside the private residence.
- [13] Having considered the Claimant's evidence, it can be gleaned that there is an inconsistency. The Claimant stated at paragraph 7 of her witness statement that the Defendant punched her in her mouth but goes on at paragraph 8 of her witness statement to say that the Defendant proceeded to slap her again. The Defendant, despite his several admissions, has specifically denied that he punched the Claimant. However, having considered the evidence of the Claimant, the evidence of the Defendant and the expert medical reports, I am satisfied on a balance of probabilities that the Defendant punched the Claimant in the face or at the very least hit her in the face with such force that it resulted in damage to her teeth. The more concentrated force of a punch would more likely have caused the damage the Claimant suffered to her teeth, and although there may have been an inconsistency in the Claimant's witness statement, I preferred her evidence in relation to the punch to that of the Defendant, having considered the evidence as a whole. The Defendant's own admissions of his actions that night, unlawfully entering the private residence, assaulting the Claimant, and damaging her car, demonstrate that he was someone who became angry, out of control and physically violent. I consider that punching the Claimant in the face is, on a balance of probabilities, likely to have occurred during the assault.

[14] In any event, to my mind, the Defendant undoubtedly inflicted a forceful blow to the Claimant's face and whether the blow was a punch or slap is not critical. What is critical is that the blow to the Claimant's face was forceful enough to result in the injuries she suffered.

[15] Having made the above finding, I will now consider the Claimant's claim for general damages and special damages for her personal injuries, and loss and damages caused by Defendant's assault.

General Damages

[16] It is recognized in our jurisdiction that in approaching an award for general damages, 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."¹ There is no precise measure of the award and 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."²

[17] In relation to damages for assault, the learned authors of **Halsbury's Laws of England**,³ state:

"Trespass to the person, whether by assault, battery or false imprisonment, is actionable without proof of actual damage. Thus in all cases of trespass nominal damages at least are recoverable, and substantial damages are recoverable for discomfort and inconvenience, or injury to dignity, even where no physical injury is proved. Where physical injury does result from the trespass, the damages will be calculated as in any other action for personal injury.

Damages for emotional or psychiatric damage which does not result in physical illness may be recovered where there is other physical injury, and may also be recovered in cases where there is no physical injury, as in the case of an assault without any battery, provided it is substantial and not too remote. An award of aggravated damages may be made in an action for trespass to the person, unlike an action in negligence. The

¹ Kathleen McNally v Eric Lotte and CITCO (BVI) Ltd. BVIHCV2001/0068 (delivered 2nd July 2003, unreported)

² Wells v Wells [1998] 3 All ER 481.

³ Damages (Volume 29 (2024)) at para. 497.

compensatory principle applies to the award of damages to a claimant in respect of injured feelings.”

- [18] The learned authors of **Mc Gregor on Damages**⁴ provide further useful guidance on the approach to an assessment of damages on a claim for assault and battery. The learned authors state:

“In so far as an assault and battery results in physical injury to the claimant, the damages will be calculated as in any other action for personal injury. However, beyond this, the tort of assault affords protection from the insult which may arise from interference with the person. Thus a further important head of damage is the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation that may be caused. Damages may thus be recovered by a claimant for an assault, with or without a technical battery, which has done him no physical injury at all. While damages for the injury to feelings may be given without their being classified as aggravated damages, it is usual to find, in such authorities as there are, that the court does make its award one of aggravated damages.”

- [19] Thus, where an assault results in personal injuries, general damages for assault and battery are based on the same heads of damages such as pain and suffering and loss of amenities, loss of expectation of life and loss of earnings. Accordingly, general damages are normally assessed by reference to the well-known guidelines laid down in **Cornilliac v St. Louis**⁵ which, broadly speaking, compensate for actual injuries sustained, pain and suffering, loss of amenities and loss of pecuniary prospects.

- [20] The Claimant’s claim for general damages as set out in her claim form is for personal injuries, loss and damages caused by the Defendant to the Claimant. The Claimant did not claim aggravated damages. Thus, in awarding general damages to the Claimant, I will consider the well-known principles set out in **Cornilliac v St. Louis**.

⁴ 18th ed para 37-001.

⁵ (1965) 7 WIR 491.

Nature and Extent of Injuries Suffered

- [21] In her witness statement, the Claimant stated that she went to the hospital on 18th October 2020 accompanied by police officers and was examined there by a nurse and received pain medication. The Claimant stated that on 19th October 2020 she went to the dental practice of Dr. Vibart Yaw who is a Dental Surgeon and an Oral & Maxillo-Facial Surgeon where she was seen by Dr. Dubelys Perez-Casado who is a Dentist and Orthodontist.
- [22] In her expert report, Dr. Dubelys Perez-Casado stated that the Claimant visited their dental practice indicating that she had received a blow to the face. Dr. Perez-Casado stated that upon examination by Dr. Anabel Figueroa Suarez, it was observed that the Claimant had busted lips, a chipped upper left central (#9) and a fractured lateral tooth (#10). She stated that the Claimant's lips and gums were also swollen and that these symptoms were indicative of some trauma to the face.
- [23] Dr. Perez-Casado further stated in her report that the Claimant was advised by Dr. Figueroa Suarez to return when her swelling had reduced and the Claimant did so on 28th October 2020. On that date, the Claimant was attended to by Dr. Perez-Casado. At this visit, a temporary composite reconstruction of tooth #10 was done until a root canal treatment and crown could be done. Dr. Perez-Casado stated that on 5th January 2021, the root canal process started, and the tooth was sealed until the Claimant's next appointment when she was due to get the crown done.
- [24] Dr. Perez-Casado stated that when the Claimant returned on 2nd February 2021, they discovered cracks along the root of the tooth and therefore advised that the Claimant get an extraction. She stated that the Claimant was then referred to Dental Care Centre to see an Oral Surgeon since their surgeon was unavailable at that time.
- [25] In response to written questions from the Defendant, Dr. Perez-Casado stated that after reviewing their records it was clear that based on her observations of the Claimant the chip to tooth #9 and fracture to tooth #10 could be attributed to

some form of trauma to the Claimant's face. Dr. Derez-Casado stated that it was difficult to give a time and dates they occurred, however, the Claimant was a regular client at the clinic and based on her records, the teeth in question were in normal condition at her previous checkup.

[26] In the expert report of Dr. Lisnell Diaz, she stated that from the Claimant's history, physical examination, and radiographic findings, she was of the impression that the Claimant sustained the following injuries as a result of the reported assault:

- (1) Apical fracture of tooth 2.2 (upper left lateral incisor).
- (2) Incisal fractures of teeth 1.1 and 2.1.

[27] In her expert report, Dr. Diaz outlined the Claimant's suggested treatment plan and the treatment timeline and prognosis. The suggested treatment plan included:

- (1) Extraction of tooth 2.2
- (2) Guided bone regeneration to preserve bone thickness for a future implant, on area 2.2
- (3) Placement of a dental implant in the 2.2 area as a conservative treatment to protect neighbouring teeth.
- (4) Dental veneers on teeth 1.1 and 2.1 to preserve tooth structure.

[28] Based on Dr. Diaz's report, the Claimant followed the treatment plan. Tooth 2.2 was extracted, and on 29th December 2022, Dr. Diaz's office performed the installation of the implant supported crown in the 2.2 region and placement of veneers on teeth 1.1 and 2.1 of the Claimant. The medical report's last note is that the Claimant visited Dr. Diaz on 20th July 2023 for a follow-up consultation and the Claimant was advised to attend annual checkups to monitor the implant stability and bone levels.

[29] Dr. Diaz concluded her report by stating that the Claimant has undergone extensive dental rehabilitation to restore function and aesthetics. She further stated that in her professional opinion, the Claimant would require long term follow ups and maintenance.

[30] In response to written questions submitted by the Defendant on 10th March 2025, Dr. Diaz stated that she last attended to the Claimant prior to issuing her expert report on 1st November 2023. She stated that the last dental examination of the Claimant by her prior to issuing the expert report also took place on 1st November 2023. She stated that on the date of her last examination, the Claimant did not report or present any pain or discomfort in the treated area.

[31] In relation to the placement of dental veneers on the Claimant, Dr. Diaz stated that the Claimant presented with fractures at the incisal edge extending from the incisal third to the middle third of the upper central incisors and that the placement of dental veneers was recommended with the intention of preserving the remaining tooth structure rather than simply concealing cosmetic imperfections.

The resulting physical disability

[32] Based on the claimant's evidence and the expert reports, the physical disability suffered by the Claimant as a result of the assault was the extraction of her upper tooth and the fracture of two of her lower incisors.

Pain and suffering endured and loss of amenities suffered

[33] The Claimant stated in her witness statement that after the assault and her follow up dental visit on 28th October 2020, she was in pain as her mouth was swollen, and her face was swollen in addition to the bite mark on her face. She stated that as had been forewarned by the dentist, she experienced pain when having cold food and beverages due to the broken tooth, but the pain was reduced after approximately three days.

[34] Due to the injury to the Claimant's teeth, a treatment plan was recommended for the Claimant which included conducting a bone graft on 8th June 2021. The Claimant stated that she was in pain for approximately five days after the procedure. She stated that on 12th June 2021, Dr. Diaz had to restitch her gums as the stitching done on 8th June 2021 after the bone graft became slack. The

Claimant stated that this increased the pain in her mouth, and she had to be prescribed antibiotics which led to her developing a yeast infection.

[35] The Claimant stated that the stitches were so painful that she could barely move her mouth to speak and the pain was excruciating. She stated she had to return to Dr. Diaz's office so that she could loosen the stitches.

[36] The Claimant further stated that she had various follow up visits with Dr. Diaz and on 28th February 2022, Dr. Diaz conducted the implants of the teeth in her mouth. She stated that this was painful and was done under local anaesthesia. The Claimant stated that after the procedure the pain lasted for about four days, and she was again given antibiotics. The Claimant stated that she had to refrain from using dairy foods, had to eat soft foods and food that were mashed, and she had to refrain from engaging in strenuous activity. She stated that this was very stressful to her as she had started going to the gym on a regular basis as it helped with her mental relief with everything she was dealing with surrounding the assault.

[37] The Claimant stated that after the dentist cleared her as ready to receive a temporary crown, she had to wear a temporary crown in the space where she was missing a tooth which had been extracted, whilst she awaited clearance to be able to place the permanent crown. She stated that the temporary crown was very unattractive, and it had a massive impact on her self-esteem and confidence. She stated that she had the temporary crown from February, 2022 until December 2022.

[38] At paragraphs 38 to 47 of her witness statement, the Claimant further described the pain and suffering and loss of amenities she suffered as a result of the damage to her teeth caused by the Defendant's assault. She described the difficulty she experienced sleeping due to the pain from the stitches during her procedure. She stated that a splint that had been placed in her mouth, which was uncomfortable, and she had to wear it for eight months.

[39] She further stated that to date she still experiences some pressure in the area surrounding the implant, and also experiences discomfort while eating certain

foods as she was advised not to bite directly into certain foods like apples, pears, and sandwiches made with tough meat. The Claimant stated that she is paranoid and tries to be as careful as possible with her dental hygiene as now she is more predisposed to gum infections and gum disease with the implant.

[40] The Claimant further stated that her teeth that were affected were to the front of her mouth and were visible when she opened her mouth to speak or smile and made her very self-conscious. She stated that she still feels very self-conscious about her smile as she does not feel confident that her teeth are as they were aesthetically before the incident.

[41] I have no doubt based on the evidence that the Claimant experienced discomfort as a result of the assault and the injuries received and this should be reflected in any award made to her.

Effect on pecuniary prospects

[42] No evidence was led by the Claimant as to loss of pecuniary prospects as a result of the injuries she received in the assault.

Psychological Trauma

[43] The Claimant also described some of the psychological trauma she experienced as a result of the assault. The Claimant stated that she applied to the Magistrates' Court for a protection order on 20th October 2020 and was granted a final protection order on 30th October 2020 for three years. She stated that she was referred by the court to the Legal Aid and Counselling Clinic for the Changes-Group Counselling. She stated that she attended twelve sessions of therapy from the 11th November 2020 to 10th February 2021.

[44] The Claimant stated that after the incident she was unable to sleep initially for long periods or to sleep soundly as she was scared that someone would break into her house. She stated that she experienced night terrors and became paranoid of her surroundings and was always on notice and scared that she may be attacked.

Award of General Damages

[45] The Claimant seeks an award of \$80,000.00 in general damages for pain, suffering and loss of amenities. She relies on the following cases in support of her award:

- (1) **Raja Mansoor v Jeron Daniel and Hulester Smitten**.⁶ A copy of this case was not provided by the Claimant, however, the case was referred to in **Hayden James v Judy Mc Coy (lawful Attorney of the Personal Representative of Noel Browne (also known as Noel Errol Cleofoster Browne), Deceased)**.⁷ The claimant in **Raja Mansoor** sustained damage to her teeth, gum and mouth when her face collided with the steering wheel of her vehicle after it was hit from behind while at a standstill. The dental treatment necessary for the claimant was not available in Antigua and Barbuda and had to be obtained in Puerto Rico. The treatment included three missing teeth, three-unit acrylic flippers, three root canals and fitting of crown of porcelain fused to metal. The treatment also involved the removal of alveolar fragments in the interior and stitches administered, extraction of three teeth, temporary replacement of teeth by an acrylic partial denture, which was not tolerated, loss of three lower incisor teeth which necessitated implants and root canal therapy. The Claimant in **Raja Mansoor** was awarded \$40,000.00 and the sum of \$20,000.00 for loss of amenities on 23rd June 2005.
- (2) **McNamara and Stephen v Seymour**.⁸ This is apparently a case from Trinidad and Tobago, a copy of which was not provided to the Court. The case however was referred to in the Grenada High Court judgment in **Kim Modeste et al v Mica Hagley**.⁹ In her written submissions, learned counsel for the Claimant submitted that the claimant in **McNamara** sustained serious damage to the teeth and received an

⁶ ANUHCv2000/0121 (unreported).

⁷ ANUHCv2003/0240 (delivered 9th March 2006, unreported) at para. 27.

⁸ The Lawyer Volume 8 No. 2 of 2011 at pg. 58.

⁹ GDAHCv2014/0550 (delivered 7th March 2024, unreported).

updated award of TT\$52,179.00 approximately EC\$20,922.55¹⁰ in general damages.

(3) **Philmore Skepple v Joseph Weekes**:¹¹ The claimant sustained the following injuries amongst others - fracture of the mandible with displacement and active bleeding, laceration of about 2 cm, fracture of the hard palate with loss of the upper incisors and canine teeth with active bleeding, dislocation of the right sternoclavicular joint, bulging deformity in the dorsum, swelling and tenderness of the right shoulder and abrasions. The Claimant received a broken jaw and obtained orthodontic help whereby his remaining teeth were moved to accommodate a fixed prosthesis which was emplaced to replace the missing teeth until further treatment. The claimant was awarded \$100,000.00 on 25th January 2010.

(4) **Samuel v Warner et al**:¹² The claimant lost four upper teeth numbered 7, 8, 9 and 10 and abrasion to the lower lip. He also suffered distortion of the supporting bone in the premaxilla area and the gum tissue surrounding the teeth. His speech was reduced to 20% although it could be improved to 60% by dentures. He would suffer impeded speech as the missing teeth were needed for enunciation and his chewing would be affected as the front teeth are the first teeth to come into contact with food being eaten. Having regard to the nature and extent of the plaintiff's injuries, the ensuing loss of amenities and his pain and suffering, the court awarded the sum of \$9,000.00 in 1997.

[46] The Defendant submitted that the Court should award the Claimant the sum of \$5,000.00 for pain and suffering and \$4,000.00 for loss of amenities. The Defendant relied on the following case:

(1) **Kim Modeste et al v Mica Hagley**:¹³ The 1st claimant was injured in a motor vehicle accident caused by the negligence of the defendant. He

¹⁰ 1 TTD = 0.401365 XCD.

¹¹ ANUHCVP2009/0010 (delivered 25th January 2010, unreported).

¹² Antigua and Barbuda High Court Civil Claim no. 40 of 1995 (delivered 27th March 1997, unreported).

¹³ GDAHCV2014/0550 (delivered 7th March 2024, unreported).

received the following personal injuries as result of the accident: (1) a laceration to the gum of the upper jaw region; (2) a lost upper frontal tooth; (3) a knock to the right knee with accompanying bruises; (4) a 4.0 cm stale jiggered laceration to the gum located superior to the upper incisors; and (5) a missing upper right canine tooth, with tenderness to the general area. The claimant claimed that he experienced difficulty when eating. He claimed to have also become quite discomfited when people looked at him in a strange way when he spoke, opened his mouth or smiled, causing him to seldom speak or smile. In respect of his dental injuries, the claimant was awarded the sum of \$5,000.00 in general damages for pain suffering.

- [47] The Defendant also relied on the case of **Samuel v Warner et al** which was also relied on by the Claimant in the present case. In **Samuel v Warner**, the claimant, a 35-year-old woman, lost four upper front teeth, distortion of the supporting bone in the premaxilla area of the gum tissue and abrasion to the lower lip. She was awarded the sum of \$9,000.00 for pain and suffering and loss of amenities
- [48] Having carefully reviewed the evidence presented in this case, I find that the Claimant's physical injuries are consistent with the physical assault inflicted by the Defendant. I am satisfied on the medical evidence that the Claimant's injuries from the physical assault consisted of apical fracture of tooth 2.2 (upper left lateral incisor) and Incisal fractures of teeth 1.1 and 2.1.
- [49] Considering the Claimant's injuries, I am of the view that they were less severe than the injuries of the claimants in the cases relied upon by the Claimant. From the expert reports, it can be seen that it was only tooth 2.2, the Claimant's upper left lateral incisor, that had to be extracted as result of the assault. The Claimant therefore had to undergo an extensive procedure for the placement of a dental implant in the 2.2 area as a conservative treatment to protect her neighbouring teeth. Thus, the dental injuries sustained by the Claimant in the present case are less severe than the claimant in **Raja Mansoor**, who had to undergo the extraction of three teeth and had to seek dental assistance overseas. The

Claimant in the present case, apart from the one implant, only had to receive further dental care by way of dental veneers on teeth 1.1 and 2.1 to preserve tooth structure.

[50] Whilst the cases of **Raja Mansoor** may offer some guidance to an award, a copy of the case was not provided to determine whether the award took into account other injuries sustained by the claimant. The Court also notes the much lower award made in **Samuel v Warner et al** where the claimant in that case lost four teeth. That award, however, was made more than 28 years ago in 1997.

[51] I also considered the case of **Modeste** supplied by the Defendant to offer guidance to the Court in the case at bar. In **Modeste**, the court considered the case of **McNamara** which was referred to by the Claimant in the present case and found that the injuries received by the claimant in **McNamara** to be more severe. I consider that the observation of the judge in **Modeste** would also be applicable to the present case as the Claimant in **McNamara** had severe damage to their teeth compared to the Claimant in the case at bar. Whilst the Claimant in the present case had fractures to three of her teeth, resulting in the loss of one tooth by way of extraction, it does not appear that the damage was as extensive as the claimant in **McNamara**.

[52] The award in respect of dental injuries to the Claimant in the recent case of **Modeste** was also on the lower end. The claimant in that case lost an upper tooth and received a laceration to the gum of the upper jaw region as a result of a vehicle collision. On 7th March 2024, the claimant was awarded general damages of \$5,000.00 in respect of his dental injuries.

[53] I have also considered the psychological trauma the Claimant has stated she suffered as a result of the Defendant's assault. I note that this was not supported by expert evidence, however, in my view, such trauma would be a natural consequence of the manner and circumstances of the assault committed by the Defendant against Claimant.

Conclusion on Award of General Damages

- [54] I have considered the Claimant's injuries, the pain and suffering she endured and loss of amenities she suffered, the discomfort experienced and I have carefully considered the cases referred to the Court, noting their distinguishing features and their vintage. I am satisfied that the circumstances of this case justify a higher award than that made in **Samuel v Warner and Modeste**, which I consider were on a much lower end, but that the award in this case ought to be lower than that made in **Raja Mansoor**. I would therefore award the Claimant the sum of \$27,000.00 in general damages for pain suffering and loss of amenities as a result of the Defendant's assault.

Future Dental Care

- [55] As it relates to future medical care, in her witness statement, the Claimant stated that she expected to incur expenses in the future although she could not speak to the precise cost. She stated that she has to have follow up consultations with Dr. Diaz and also has to do regular cleanings for her natural teeth which she says are changing in colour whilst the implants and veneers placed in her mouth cannot stain. As a result, the Claimant states that the colour differences between her natural teeth and the veneer and implant are noticeable.
- [56] The Claimant further stated that Dr. Diaz recommended that she would need to have another veneer done in the near future for the aesthetics in her mouth, the cost of which would be \$3,200.00. This, she says, would be a cost to her if not borne by the Defendant.
- [57] During cross-examination of the Claimant, learned counsel for the Defendant stated to the Claimant that there is no evidence in the medical reports of treatment for future discomfort. The Claimant responded that she cannot tell what will happen in the future. Under further cross-examination, learned counsel for the Defendant stated to the Claimant that as per the medical report, her last visit to Dr. Diaz was in November 2023, and that she has therefore not been attending for follow up visits. The Claimant agreed that that is what is before the Court but stated that her last visit was not in November 2023.

[58] In her expert report, Dr. Diaz does state that the Claimant was advised to attend for annual checkups to monitor the implant stability and bone levels and that her professional opinion is that the Claimant requires long term follow ups and maintenance. It is noteworthy that the expert reports make no mention of the Claimant requiring a further veneer. The Claimant also agreed under cross-examination that the medical report did not indicate that a further veneer is required.

Conclusion on Award for Future Dental Care

[59] I am not satisfied on the evidence before the Court that the Claimant is required to receive another veneer due to the Defendant's assault. The expert reports which were filed on 5th December 2024 and 10th March 2025 make no mention of the Claimant requiring this. I would therefore disallow any award for future expenses in relation to a further veneer.

[60] I am satisfied however, based on the Claimant's evidence in her witness statement, the evidence elicited under cross-examination and the expert evidence, that the Claimant would be required to do checkups to monitor the implant stability. I am therefore minded to make a modest award to the Claimant in this regard to cover the possible costs of future consultations. However, as it relates to Claimant's evidence to cover the costs of having cleanings to maintain the whiteness of her teeth, I am of the view that this is part of regular dental care and dental hygiene, and I decline to make any provision for this in an award for the Claimant's future dental care.

[61] Based on the past expenses as were claimed by the Claimant in her statement of claim (as discussed below), and guided by the decision of the Privy Council in **Seepersad v Persad and another**,¹⁴ I would award the Claimant a moderate sum of \$3,000.00 for any future dental checkups as recommended by the expert.

¹⁴ [2004] UKPC 19.

Special Damages

- [62] Special damages, or past pecuniary loss, are financial losses to the date of trial that can be calculated fairly precisely, for example past loss of earnings, past travel expenses, past care and the like. It is well established so as to be considered trite that special damages must be strictly pleaded, and proved.
- [63] The Claimant pleaded the following particulars of special damages in her statement of claim:

Consultation – Grenda Medical Services Ltd 21 st October 2020	\$80.00
Composite reconstruction – 28 th October 2020	\$200.00
Dental examination – Vibart Yaw Dental Co. Ltd	\$50.00
Root canal treatment – 5 th January 2021	\$450.00
Implant consultation #11 – 4 th February 2021	\$150.00
Instalment payment on implant – 26 th February 2021	\$1,850.00
Temporary fixed bridge partial – 26 th February 2021	\$1,000.00
Extraction #10 – 8 th June 2021	\$300.00
Final payment for temporary bridge – 8 th June 2021	\$1,000.00
Tooth retainer #9 – 26 th August 2021	\$300.00
X-ray – Dental Care Centre – 22 nd September 2021	\$25.00
Cementation temporary tooth – 7 th October 2021	\$50.00
Cleaning with ultrasonic	\$150.00
Implant screw – Dental Care Centre – 28 th February 2022	\$1,850.00
Fedex transport temporary fixed bridge partial	\$200.00
Temporary crown implant	\$300.00
Instalment on prosthetic treatment	\$1,000.00
Final payment on veneer and crown over implant teeth (#8, #9, #10)	\$3,830.00
X-ray – Dental Care Centre – 29 th March 2022	\$25.00
Caribbean Dental & Medical Healthcare (Laboratory Service and shipping of products)	\$2,870.00
Total	\$15,680.00

[64] The Claimant has provided receipts for each of the above items of special damages. I am satisfied on the Claimant's evidence that she incurred each of the sums pleaded as a result of the Defendant's assault and that she has adequately proved each pleaded sums by providing paid receipts. The Claimant is therefore entitled to recover special damages in the pleaded sum of \$15,680.00.

[65] In her witness statement, the Claimant sought to evidence a further loss of \$1,730.00 for legal costs incurred to hire legal counsel to file an application for a protection order on her behalf in the magistrate's court. The Claimant did not plead this sum in her statement of claim or include it as a schedule of loss. A claimant cannot seek to recover items of special damages by setting out the loss in a witness statement or list of documents which has not been pleaded. The failure to amend a statement of claim or seek the agreement of the other party to recover the alleged loss means that a claimant cannot recover the sum.¹⁵ The Claimant is therefore not entitled to recover the sum of \$1,730.00 for legal costs incurred to obtain the protection order against the Defendant.

Interest

[66] The Claimant is entitled to interest on her awards of general and special damages. In making an award of interest, the Court is guided by the judgment of the Court of Appeal in **Terrance Amedee v Marcus Modeste**.¹⁶

Costs

[67] The Claimant is also entitled to prescribed costs in accordance with Part 65 of the **Civil Procedure Rules (Revised Edition) 2023**.

Disposition

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

¹⁵ See: *Carl Webster v Historic Beacon Point Anguilla Ltd* AXAHCVP2020/0020 (delivered 21st June 2023, unreported; re-issued 19th September 2023).

¹⁶ SLUHCVP2022/0001 (delivered 9th November 2023)

- (1) General damages for pain suffering and loss of amenities in the sum of \$27,000.00 together with interest at the rate of 6% per annum from the date of service of the claim to the date of this order.
- (2) The sum of \$3,000.00 for future dental care. No pre-judgment interest on this award.
- (3) Special damages in the sum \$15,680.00 together with interest at the rate of 3% per annum from the date of each of the expenses allowed to the date of this order.
- (4) Prescribed costs on the global award in accordance with rule 65.5 of the Civil Procedure Rules (Revised Edition) 2023 and CPR Part 65, appendices B and C.
- (5) Post judgment interest at the rate of 6% per annum until payment in full.

[69] I wish to thank learned counsel on both side for their assistance to the Court.

Carlos Cameron Michel
High Court Master

By the Court

Registrar