

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2020/0219

BETWEEN:

JAMESON MANNIX

OSAZE MANNIX

Claimants

And

HAMISH ANTHONY

Defendant

CONSOLIDATED WITH:

CLAIM NO: ANUHCV2020/0220

OSAZE MANNIX

Claimant

And

HAMISH ANTHONY

Defendant

JAMESON MANNIX

Ancillary Defendant

Appearances:

Ms. Michelle Sterling for the Claimants

Mr. Loy Weste and Ms. Tiwana Martin for the Defendant

2024: November 26th

2025: January 27.

JUDGMENT ON ASSESSMENT OF DAMAGES

- [1] **WILLIAMS, J.:** This claim arises out of a vehicular accident which occurred on 16th July 2017 at Urlings in the parish of St. Mary's. The Claimants alleged that the four- door pick-up truck they were travelling in was struck by the Defendant's Subaru motor vehicle which was proceeding from a minor road. As a result, the Claimants allege that they have suffered injuries and commenced proceedings against the Defendant. The First Claimant Jameson Mannix and the Second Claimant Osaze Mannix are father and son respectively and are both fishermen.
- [2] On 21st November 2024, the parties entered into a consent order whereby the Defendant admitted liability. The matter was therefore set down for assessment of damages. This hearing took place on 26th November 2024 with the Claimants and Dr. K. Singh an orthopaedic surgeon (who had previously been appointed as an expert witness) giving evidence and being cross-examined. The Defendant attended trial remotely but did not give evidence.

Special Damages (Jameson Mannix)

Medical Expenses

- [3] Jameson Mannix has claimed the following as Special Damages:
- | | |
|--|--------------|
| 1. Clearing Land | : \$2,350.00 |
| 2. Hired Fishermen from 3 rd November 2017 to 16 June 2020: | \$25,592.31 |
| 3. Medical Expenses | : \$6,233.90 |
- [4] It is trite that special damages must be specifically pleaded and proven.¹ In this case the Jameson Mannix has provided receipts for all his medical expenses and these have been accepted by the Defendant. Judgment will therefore be entered for the sum of \$8,555.40 in respect of medical expenses. However, the Defendant disputes the sums claimed for clearing land and hiring fishermen.

¹ *Ilkew v Samuels* [1963] 1 WLR 991

Land Clearance

- [5] In terms of the sums incurred for land clearance, Jameson Mannix states at paragraph 17 of his witness statement that he has two farms in the Old Road area where he plants ground provisions, yams and other root crops. According to him (since the accident) he has been unable to clear the ground to prepare it for a new crop and has paid someone to clear the land.
- [6] I note that Jameson Mannix was fifty-two years old at the date of the accident which may be considered middle-aged. I am not convinced that even apart from the accident that a man of that age would have undertaken the strenuous task of land clearance all by himself. It is therefore more likely than not that Mr. Mannix would have hired someone to perform this labour in any event. I therefore disallow the claim for land clearance.

Hiring of Fishermen

- [7] At paragraph 13 of his witness statement Jameson Mannix states; "The injury has negatively impacted my business. As I mentioned, I am a licensed fisherman, I run a legitimate business where I pay my taxes. I work along with my son and one other person. My business had a good profit margin where I was able to sufficiently provide for my family. Since the accident I have incurred higher overheads because I have to employ men to do the work my son and I used to do in an efficient and profitable manner."
- [8] At paragraph 15 of his witness statement he acknowledges that the Defendant's insurers issued him a cheque for \$19,700.00 as compensation for loss of income following the accident. The said paragraph also recounts that this sum was awarded after the Defendant's insurers had examined his ledgers. It is therefore very likely that the sums paid to the other fishermen were taken into account by the insurers. In the circumstances, any further award could amount to a double-recovery. Thus, the claim for payment of fishermen to assist Jameson Mannix must be disallowed.

Special Damages (Osaze Mannix)

Medical Expenses

- [9] Osaze Mannix has provided receipts for medical expenses which total \$6,690.00. These have been accepted by the Defendant. Judgment will therefore be entered for that sum.

General Damages

- [10] The case of **Cornilliac v. St. Louis**² provides the approach taken by the courts in quantifying general damages for personal injuries. According to Wooding CJ in that case, the following has to be taken into account in computing an award for general damages:-

- (a) The nature and extent of the injuries;
- (b) Nature and gravity of the resulting physical disability;
- (c) Pain, suffering which had to be endured;
- (d) loss of amenities (normal enjoyment of life) suffered; and
- (e) the extent to which pecuniary prospects were affected.

- [11] The evidence of both Claimants' injuries is contained in the medical report of Dr. K. Singh which was filed on 20th September 2023. Dr. Singh also attended court and was cross-examined. In his report, Dr. Singh indicates that he examined Jameson Mannix on 5th April 2018.

- [12] According to the report, Mr. Mannix was the driver of a pick-up truck which overturned resulting in him suffering right shoulder and right thigh injuries. Dr. Singh diagnosed Mr. Mannix as suffering from:

1. Impingement syndrome right shoulder.
2. SLAP two tear of right rotator cuff.

² [1965] 7 WIR 491

[13] Dr. Singh further indicates that Mr. Mannix was temporarily disabled in the full functions of his right shoulder and would require a final assessment to evaluate the total duration of his temporary disability as well as the percentage of physical impairment that would result at the end of his treatment. This further assessment was carried out and is evidenced by a letter dated 13th May 2019 contained in Dr. Singh's report.

[14] The said letter confirms that Mr. Mannix has been treated for his right rotator cuff injury. According to the report Mr. Mannix has been temporarily disabled in the functions of his right shoulder from the date of the accident until the date of the report. Thus, the report states that Mr. Mannix has ended up with 15% permanent physical impairment in his right dominant extremity and 9% permanent impairment as a whole man. According to Dr. Singh this percentage of permanent physical impairment will increase as Mr. Mannix grows older on account of developing further post traumatic degenerative joint disease. Thus, Dr. Singh states Mr. Mannix is unfit to be a fisherman to earn a living for his family because of inability to function in his right upper extremity. This diagnosis had been confirmed by an MRI scan carried out on 27th April 2018.

[15] According to Dr. Singh, Mr. Mannix also complained of being unable to sleep as a result of the pain. This has affected his mental status and his overall lifestyle. The report states that Mr. Mannix may need the following surgery in the future:

1. Acromioplasty.
2. Arthroscopic debridement and repair of rotator cuff supraspinatus tendon.

[16] However, Dr. Singh states that the percentage of impairment would not change even after surgery. The average cost of the surgery would be EC\$40,000.00 to EC\$70,000.00. Dr. Singh also states that Mr. Mannix would require regular orthopaedic consultation at EC\$250.00 per session. Physiotherapy at the rate of EC\$120.00 per session at a minimum of three times a week would also be required.

[17] It should be noted that at trial counsel for the Claimants attempted to introduce a further report from Dr. Singh into evidence. This was refused on the basis that this report had not been disclosed pursuant to CPR Rule 28.12.

Osaze Mannix

[18] Dr. Singh indicates that he examined Osaze Mannix on 23rd March 2018. Osaze Mannix was twenty-two years old at the date of the accident. On examination Mr. Mannix was found to be suffering from severe tenderness on both sides of the scapular muscles, right more than the left with inability to get involved in any recreational or competitive sports which is one of his desired professions in the future.

[19] Osaze Mannix was diagnosed as follows:

1. Spasm of levator scapulae muscles right side.
2. Signs of radiculopathy in lower cervical and upper thoracic spine.
3. Tender myositis of rhomboideus major rhomboideus minor muscles with limitation of scapular movements against resistance.

[20] In an updated letter dated 14th May 2019, Dr. Singh indicated that he had regularly seen Mr. Mannix since 23rd March 2018. He was seen on 13th May 2019 and complained of pain on the inner side of his shoulder blade in his upper back as well as severe pain in the lower back with inability to bend forward. Osaze Mannix was assessed with a "Disc Bulge L4/L5 which is equal to 7% permanent physical impairment as a whole person". Dr. Singh states that the percentage of permanent physical impairment will increase as Mr. Mannix grows older on account of developing post traumatic degenerative joint disease.

[21] Dr. Singh states that Mr. Mannix did not require surgery, however, he would need decompression of the neural components if his percentage of permanent physical impairment increases or his remaining 93% of ability decreases. The approximate cost of surgery would range from EC\$50,000.00 to EC\$70,000.00. According to Dr. Singh, Mr. Mannix would require orthopaedic consultation at a minimum of six

times per year at the rate of EC\$250.00 per consultation. Mr. Mannix would also require physical therapy at a cost of EC\$120.00 per consultation.

Pain and Suffering and Loss of Amenities

Jameson Mannix

[22] In his witness statement Mr. Mannix describes feeling pain in his shoulder and hamstring immediately after the accident. He had been taken to hospital and discharged the next day with painkillers and required to attend follow-up outpatient clinic. He describes that the pain killers were not very effective and did not remedy the pain which he was constantly experiencing.

[23] He describes being given steroid injections by Dr. Singh which gave him relief for about three weeks. After relapses in pain, he states that Dr. Singh advised him to do the necessary exercises to help his condition. At paragraph 14 of his witness statement, Mr. Jameson Mannix states that he is unable to carry conchs under water, pull fish pots or clean the ropes used to catch fish. He states that even getting into a boat has become difficult. At paragraphs 18 to 19 of his witness statement, Mr. Mannix states that he can no longer participate in usual sporting activities including cricket, football and weight training. At paragraph 20 of his witness statement he states that the injury has affected the quality and delivery of his conjugal rights. Under cross-examination Mr. Mannix admitted however that he had not played cricket or football for over fifteen years prior to the accident. Mr. Mannix also admitted that he still went to sea but the range of tasks he could carry out was limited.

[24] In **Wells v. Wells**³ it was stated as follows:

"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

³ [1998] 3 ALL ER 481

awards in comparable cases, as represents the court's best estimate of the plaintiff's general damages."

[25] The parties submitted several authorities to the court for consideration. Counsel for the Claimant submitted that damages under this head should be EC\$150,000.00. This was based on the cases of **Forbes v. Morillo**⁴ and **Peters v. Gumbs**.⁵ The Defendant submitted damages of EC\$45,000.00 was reasonable for pain and suffering and loss of amenities. The Defendant relied on the authorities of **Peter Roberts v. Damien Benjamin**⁶ and **Denroy Baptiste v. Tortola Yacht Services Ltd.**⁷

[26] In my view the injuries suffered by Jameson Mannix are similar to those suffered by the Claimant in **Peter Roberts v. Damien Benjamin**. In that case the Claimant a fifty-year-old man suffered a rotator cuff injury along with numerous minor injuries after being struck by a motor-vehicle. The Claimant was awarded EC\$45,000.00 as damages for pain and suffering and loss of amenities.

[27] Similarly in **Forbes v. Morillo**⁸ the Claimant suffered injuries described as contusions to the head, neck, upper back, right knee and ankle. There was tenderness in the right knee and ankle and in the costo-chondral joint of the chest, inflammation in the left shoulder biceps and rotator cuff. The Claimant was awarded US\$40,000.00 for pain and suffering and loss of amenities.

[28] The above authorities were decided in 2020 and 2006 respectively. Therefore, taking inflation into account I find that Jameson Mannix should be awarded the sum of \$55,000.00 for pain and suffering and loss of amenities.

⁴ BVIHCV 2003/0005

⁵ Claim No. AXAHCV2011/0059

⁶ ANUHCV2019/0072 (delivered 11th February 2020)

⁷ BVIHCV2006/0130 (delivered 28th May, 2008)

⁸ BVIHCV 2003/0005

Osaze Mannix

[29] In his witness statement, Osaze Mannix indicates that he was granted a total of 4 weeks sick leave post-accident. He further states that he was unable to do any heavy lifting and was unable to return to work to perform his usual duties. At paragraph 14 of his witness statement Mr. Mannix explains that his injury affects his quality of life. He states that if he works for an entire day, he is then unable to work for the next day or for days due to pain. As a result, his earnings have reduced from EC\$260.00 daily in the high season or EC\$180.00 daily in the low season, to as low as EC\$120.00 per day as he works less days. He believes that he may have to find a new profession as things will get worse.

[30] Mr. Mannix further states that he used to be highly active and played football for the Old Road and Golden Grove football teams. However, he was forced to quit playing football altogether. He also outlined the impact of his injuries on his sexual relations with his significant other.

[31] Under cross-examination Mr. Mannix indicated that he works six to seven days per week. He also admitted that he can run. Mr. Mannix also agreed that he had provided no documentary evidence of sick leave to the court.

[32] Again, the parties have submitted several authorities for consideration. Counsel for Osaze Mannix has submitted that he is entitled to damages of EC\$100,000.00 for pain and suffering and loss of amenities. Counsel for the Defendant has submitted that damages of EC\$45,000.00 are payable.

[33] I find that Mr. Mannix's injuries seem to be similar to those suffered by the claimants in **Lewis v. Serrant**⁹ and **Sparman v. Jolly Beach Resort and Spa**.¹⁰ In **Lewis v. Serrant** the claimant a 45-year-old man, suffered injuries as a result of a motor vehicular accident. The claimant suffered a left foraminal disc protrusion L3-L4 and L4-L5 with left L3-L5 nerve root encroachment. A small disc protrusion at the L5-

⁹ Claim No. DOMHCV 2017/0161(Delivered 8th February, 2019)

¹⁰ Claim No. ANUHCv2012/0292 (Delivered 4th December,2018)

S1 region was noted without nerve root encroachment. The claimant was diagnosed with multiple post-traumatic disc herniation lumbar spine L3-L4 and L4-L5. The claimant suffered excruciating pain and surgery was recommended. The pain prevented the Claimant from taking part in any sporting activities or playing with his six-year-old daughter. The court awarded EC\$70,000.00 for pain and suffering and loss of amenities.

[34] In **Sparman v. Jolly Beach Resort and Spa** the claimant suffered from pains in her lower back, right hip and lower limb after a fall at work. She was diagnosed as suffering from sacroiliitis/sprain which progressed to mild discal dehydration with mild bulge of L4-L5 spine. Surgery had been recommended however the claimant did not have the means to afford the same. The claimant continued to experience severe back pain and was no longer able to work as a cook as she was unable to stand for long hours. The claimant was awarded EC\$65,000.00 for pain and suffering and loss of amenities.

[35] I have taken into account some inconsistencies in Osaze Mannix's evidence. At paragraph 14 of his witness statement he indicates that he only worked three to four days a week due to pain. However, in cross-examination he stated that he worked six to seven days weekly. Mr. Mannix has given no explanation for this discrepancy.

[36] However, the medical evidence as to the nature and extent of the injuries remains largely unchallenged. I note that although Mr. Mannix's injuries are similar to the **Sparman** and **Lewis** cases, he seems to have made a better recovery. By his own admission he is able to work although he still suffers pain. In the circumstances the sum of EC\$70,000.00 will be awarded to Osaze Mannix for pain and suffering and loss of amenities.

Future Medical Care

Jameson Mannix

[37] In terms of cost of future medical care, I accept the guidance of the Privy Council in **Seepersad v. Persad**¹¹ where the board stated as follows:

"It is not possible to form an accurate and verifiable estimate of the future cost of medical treatment and medication, because so much depends on how the appellant progresses in the future. It was not challenged that he had incurred such expense in the past, as is shown by the inclusion in the agreed special damage of a significant sum for medical treatment and medication. It does appear that there is likely to be some continuing expense, even if he improves significantly as time goes on. In their Lordships' opinion the most appropriate way to deal with this item is to allow a figure which will reflect the possibility of his incurring future expense of this type, on similar lines to the well-established approach to valuing loss of employment capacity."

[38] In terms of future surgery, I note that Dr. Singh's report does not state that Jameson Mannix requires surgery. The report merely states that he may (my emphasis) require surgery in the future. This was confirmed by Dr. Singh in cross-examination. Accordingly, the claim for the cost of future surgery will be disallowed.

[39] Dr. Singh has stated that Mr. Mannix will require regular follow-up orthopedic consultations at the cost of \$250.00 per consultation. He will also require physiotherapy at the cost of \$120.00 per session, three times a week. Unfortunately, Dr. Singh does not provide an estimate as to the number of consultations or physiotherapy sessions that will be required overall.

[40] Fortunately, in terms of future orthopaedic consultations, the parties are not far apart on this issue. Thus, the sum of EC\$7,500.00 will be awarded in respect of future orthopaedic consultations. The court also finds the sum of EC\$18,720.00

¹¹ [2004] UKPC 19 (Delivered 1st April, 2004)

claimed as the cost of physiotherapy for one year as being reasonable. Thus, Jameson Mannix will be awarded the total sum of EC\$33,720.00 for the cost of future medical care.

Osaze Mannix

[41] Dr. Singh's report mentions the possibility of future surgery in relation to Osaze Mannix. However, the report considers surgery to be contingent upon Osaze's condition worsening. This prognosis dates from 2019 and no follow-up report is in evidence. Further, I note that Mr. Mannix has stated under oath that he now works six to seven days weekly. This may be evidence that his condition is improving. In these circumstances, there is no evidence that surgery is necessary, thus the claim in respect of future surgery will be disallowed.

[42] In terms of costs of future orthopedic consultations and physiotherapy, the parties are also not far apart with the Defendant submitting a slightly higher estimate than the Claimant. I am therefore content to order the sum of \$22,500.00 in respect of future consultations and \$10,800.00 in respect of physiotherapy. Thus, the total award to Osaze Mannix in respect of future medical care will be \$33,300.00.

Future Loss of Earnings/Loss of Earning Capacity

Jameson Mannix

[43] Mr. Mannix's evidence is not that he has lost all income as a result of the accident, but rather that he now has to employ persons to perform tasks that he would have performed himself. This in turn has led to a reduction in his profit which he uses to support himself.

[44] Using the multiplier/multiplicand method learned counsel submits on his behalf that the court should apply a multiplier of 5 and a multiplicand of \$45,600.00. This is based on monthly earnings of \$3800.00. Learned counsel further admits that Mr. Mannix has not provided documentary evidence of his statutory deductions to substantiate his earnings. Learned counsel for the Defendant on the other hand

submits that Jameson Mannix should only be awarded a nominal sum of \$5000.00 in the event the court accepts that he would be disadvantaged in the labour market should his fishing business come to an end.

- [45] I agree with counsel for the Defendant that the appropriate award to be made is one for loss of earning capacity. The relevant principle is outlined in **Alphonso v. Ramnath**¹² where Byron CJ stated:

“The learning from the aforementioned two cases¹³ is that this head of damage would arise where a plaintiff is, at the time of trial, in employment but there is a risk that he may lose this employment at some time in the future and may then, as a result of his injury, be at a disadvantage in getting another job or an equally well-paid job. The cases show that it is a different head of damages from an actual loss of future earnings which can already be proved at the time of the trial.” As Denning MR put it in the **Fairley** case. "It is important to realize that there is a difference between award for loss of earnings as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution of earning capacity is awarded as part of general damages."

- [46] In this case Mr. Mannix has stated under cross-examination that he still fishes but the tasks he is able to perform are limited. Thus, he has had to employ persons to assist. However, the available evidence renders it almost impossible to assess his alleged loss of profits as the method by which he calculates his profits is not clear.

- [47] Despite this, I agree that there is a likelihood that Mr. Mannix's business could fail should his labour costs increase. Thus Mr. Mannix could then find himself disadvantaged by having to seek alternative employment in his sixties whilst

¹² (1997)56 WIR 183 at page 194

¹³ Moeliker v. Mayrolle [1977] 1 All ER 9 and Fairley v. John Thompson [1973] 2 Lloyds Rep 40

suffering from an injury. Due to the real risk of this occurring, I would award Jameson Mannix the sum of \$20,000.00 for loss of earning capacity.

Osaze Mannix

- [48] In the case of Osaze Mannix I am similarly of the view that as a result of his injuries he would be disadvantaged in the labour market should he be unable to continue working with his father. However, Mr. Mannix being 29 years old at the date of assessment is in a better position to retrain for a new career. In the circumstances, I would award Osaze Mannix the sum of \$10,000.00 for loss of earning capacity.

Interest

- [49] In accordance with the principles outlined by the Court of Appeal in **Alphonso v. Ramnath**¹⁴ and **Terrence Amedee v. Marcus Modeste**¹⁵ interest will be awarded to the Claimants as follows:

1. Interest on General Damages at the rate of 5% per annum from the date of service of the Claim Form until judgment.
2. Interest on Special Damages at the rate of 2.5% per annum from the date of service of the Claim Form until judgment.
3. Interest on all damages at the statutory rate of 5% per annum from the date of judgment until payment.

Costs

- [50] The Claimants are entitled to prescribed costs in accordance with CPR Rule 65.5-Appendix B and Column 6 of Appendix C.

Order

- [51] The Defendant shall pay the Claimant-Jameson Mannix damages as follows:
1. Special damages of \$8,555.40.
 2. General damages of \$108,720.00

¹⁴ (1997) 56 WIR 183

¹⁵ Claim No. SLUHCVP2022/0001 (Delivered 9th November, 2023)

3. Interest on General Damages at the rate of 5% per annum from the date of service of the Claim Form until judgment.
4. Interest on Special Damages at the rate of 2.5% per annum from the date of service of the Claim Form until judgment.
5. Interest on all damages at the statutory rate of 5% per annum from the date of judgment until payment.
6. Prescribed Costs on the damages awarded in accordance with CPR Rule 65.5-Appendix B and Column 6 of Appendix C.

[52] The Defendant shall pay the Claimant- Osaze Mannix damages as follows:

1. Special damages of \$6,690.00.
2. General damages of \$113,000.00.
3. Interest on General Damages at the rate of 5% per annum from the date of service of the Claim Form until judgment.
4. Interest on Special Damages at the rate of 2.5% per annum from the date of service of the Claim Form until judgment.
5. Interest on all damages at the statutory rate of 5% per annum from the date of judgment until payment.
6. Prescribed Costs on the damages awarded in accordance with CPR Rule 65.5-Appendix B and Column 6 of Appendix C.

Rene Williams
High Court Judge



By The Court

Registrar