

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

GRENADA

CLAIM NO. GDAHCV2022/0371

BETWEEN:

SOLOMON BRATHWAITE

Claimant

and

- 1. RANDY LALSEE**
- 2. JOENIL LALSEE**

Defendants

Appearances:

Ms. Naeisha John-Diarra for the Claimant
Ms. Herricia Willis for the Defendants

2024: May 2, 6.

DECISION

- [1] **MICHEL M:** This assessment of damages stems from a physical altercation between the Claimant and the Defendants on 2nd July 2016, during which the Claimant was inflicted with chop wounds from a cutlass. By claim form and statement of claim filed on 30th September 2022, the Claimant commenced the proceedings against the Defendants seeking damages for assault and battery, including general damages and special damages in the sum of \$23,691.58, plus interest and costs. The Claimant alleged in his statement of claim that the Defendants wrongfully assaulted and battered him by inflicting chop wounds to his right hand, right arm and back.

- [2] The Defendants failed to file an acknowledgement of service or a defence to the Claimant's claim and a default judgment was entered for the Claimant for an amount to be decided by the Court. An application filed by the Defendants after the entry of the default judgment to strike out the Claimant's claim was dismissed by the Court.

The Assessment of Damages

- [3] The Claimant properly pleaded a claim against the Defendants for damages for assault and battery. Liability having been concluded by the default judgment, the only matter that remains for determination by the Court is the quantum of damages that the Claimant is entitled to on his claim. The Defendants have opted to participate in the assessment, therefore all matters that go to quantification of damages are open to the Defendants to challenge in so far as any such challenge is not inconsistent with the issue of liability concluded by the default judgment.
- [4] In support of the assessment of damages, the Claimant relied on his witness statement and the witness statement of his father, John Brathwaite. The Claimant also relied on the expert medical report of Dr. Douglas Noel dated 16th September 2023 which was filed in these proceedings on 18th September 2023 with the Court's permission in accordance with Part 32 of the **Civil Procedure Rules (Revised Edition) 2023**. In his expert report, Dr. Noel stated that the Claimant was examined by him on 29th August 2023.
- [5] The Defendants each filed a witness statement for the assessment and also filed the witness statement of one Leishon Baptiste, however, Mr. Baptiste did not attend the assessment hearing and was accordingly not called to give evidence on behalf of the Defendants.
- [6] Written submissions together with authorities were also filed on behalf both parties for the assessment.

Damages for Assault and Battery

- [7] Assault and battery are actionable without proof of actual damage, and in all cases, nominal or substantial general damages are recoverable for physical or mental injury caused by the assault or battery.

General Damages

- [8] 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**¹ which, broadly speaking, compensate for actual injuries sustained, pain and suffering, loss of amenities and loss of pecuniary prospects.
- [9] Following the guidance in **Cornilliac v St. Louis**, it is now well settled in this jurisdiction that in assessing general damages for personal injuries, the court should 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

Nature and Extent of Injuries Suffered

- [10] The Claimant is now 38 years old and was 30 years old at the time of the incident. Notably, the Claimant is right-handed and the injuries he suffered mostly pertain to his right hand.
- [11] The Claimant's injuries are detailed in his witness statement and the expert medical report of Dr. Douglas Noel. As a result of altercation with the Defendants during which the Claimant was repeatedly struck with a cutlass, the Claimant received lacerations to the right hand, right arm and abrasions to the back. The Claimant sustained a deep wound to the right hand resulting in damage to the

¹ (1965) 7 WIR 491.

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

palmar digital nerves to the right index and middle fingers and flexor and extensor tendon injuries in the right hand.

[12] Following the incident, the Claimant was taken to the Casualty Department of the General Hospital by his father where his wounds were cleaned and sutured and he was given a tetanus toxoid injection. He was admitted to the male surgical ward of the General Hospital the same day.

[13] The Claimant's right hand was operated on under general anesthesia on 8th July 2016, and during the operation it was observed that there was damage to a section of the flexor digitorum profundus (FDP) tendon to the right middle finger, section of extensor tendons to right index and middle fingers and nerve damage at the laceration site in the palm of the Claimant's right hand. Repairs of nerve and tendons were performed to the right hand, his wounds were closed, and immobilization was done. The Claimant was discharged from hospital on 11th July 2016, but subsequently had a back slab removed in Trinidad on 1st August 2016.

Nature and Gravity of the Resulting Physical Disability

[14] In his expert medical report, Dr. Noel noted that on examination of the Claimant on 29th August 2023, the following were observed:

- (i) a 12 x 7 cm abrasion scar on the right scapular region;
- (ii) a longitudinal 11 cm scar on the right flank and a 7 cm longitudinal scar also on the right flank inferiorly;
- (iii) a 14 cm x 6 mm scar on the right anterior deltoid region;
- (iv) a 12 cm scar in the cleft between the right index and middle fingers;
- (v) a 3 cm scar on the dorsum of the right index finger middle phalangeal region.

[15] Dr. Noel noted that the Claimant's scars on the right arm, right scapular region, right flank and right hand are permanent.

[16] Dr. Noel explained that the Claimant had reduced sensation to touch in the right index finger on the volar aspect and he had no extension of the metacarpal

phalangeal joints of the right index, middle and ring fingers compared to 25 degree extension of these joints in the left hand. Dr. Noel also noted that the Claimant's grip strength of the right hand was 70% of that of the left.

- [17] In giving his prognosis of the Claimant, Dr. Noel noted that the right-hand injury the Claimant received was a severe injury. He was of the opinion that the Claimant's reduced sensation to touch of the right index finger is permanent and the lack of extension of the metacarpophalangeal joints of his right index, middle and ring finger is permanent. Dr. Noel opined that the Claimant's dexterity, function, usefulness and efficiency of right-hand movements is significantly affected and that this is permanent.

Pain and Suffering Endured

- [18] In his witness statement, the Claimant described that following the altercation with the Defendants, he realised that his right hand was severely chopped and he noticed blood all over his body. He stated that he was transported to the hospital by his father and remained conscious during the journey and was very uncomfortable. He stated that he was in pain and was losing blood and was experiencing dizziness and remembered thinking that he would lose his hand.
- [19] The Claimant stated that following the operation on his right arm he woke up crying in pain and noticing that his hand was in a back slab.

Loss of Amenities Suffered

- [20] The Claimant stated that he was unable to lift or straighten his right hand after surgery. He explained that when he was discharged from hospital and returned home, his girlfriend had to assist him with bathing and doing everyday tasks as he was unable to do so for himself for approximately 6 weeks.
- [21] The Claimant's father also gave evidence that when the Claimant was discharged from hospital and returned home, the Claimant's then girlfriend helped take care of him and nurse him. He further stated that the Claimant's immediate family members including his mother, siblings and himself, also

contributed to the Claimant's well-being by cooking for him and making financial provisions were necessary.

[22] The Claimant stated that on or about 1st August 2016, he travelled to Trinidad for recuperation and medical treatment. He stated that he was admitted to the hospital as he was experiencing excruciating pain from the injuries and the back slab was removed. He also stated that he spent one day in hospital and upon his discharge he was instructed to soak his hand in Epsom salt and to do physiotherapy as part of his healing process. The Claimant stated that he did physiotherapy for about 10 months following his injuries.

[23] The Claimant stated that he was unable to do any lifting or strenuous work for about two years after the incident and that as a result of the incident he was unable to do construction work and had to take on farming full time.

[24] The Claimant stated that prior to the incident, he enjoyed playing sports and was part of a cricket team in his community with which he took part in cricket competitions; however, after the incident, he was unable to play cricket and is still unable to do so presently and is not likely to be able to enjoy it in the future.

[25] In his medical report, Dr. Noel explained that presently, the Claimant complains of cramps in the right hand and pain in the right hand and that these complaints come on when the Claimant uses the right hand for farming and construction and interior decorating.

[26] The claimant explained that he suffered emotional distress and stress as a result of the Defendants' actions.

The extent to which the Claimant's pecuniary prospects have been affected

[27] The Claimant also stated that he is unlikely to earn a good income in the future from doing construction work as he continues to experience pain and feels discomfort including cramps in his hand whenever he tries to do so. He stated that he experiences reduced sensation to touch at the index and middle fingers of my right hand.

The Defendants' Evidence

- [28] The Defendants' evidence on the assessment sought to give their version of the altercation with the Claimant. However, the version of events the Defendants sought to dispute goes to the issue of liability, which as has already been stated, is conclusive by the default judgment. There is a clear admission by the Defendants that the Defendants were involved in an altercation with the Claimant and that at the minimum, the 1st Defendant used a cutlass to hit the Claimant during the altercation.

Award for General Damages

- [29] The purpose of compensation for personal injuries is to put the injured party into the position he or she was in before the injuries occurred. In arriving at an award for general damages, the approach in this jurisdiction is to make an award within the broad criterion of what would be reasonable compensation considering comparable cases emanating from the jurisdiction.
- [30] I have read and considered all the written submissions filed on behalf of the parties and I have ready and considered all the cases placed before the court by counsel for the parties in arriving at an awarded of general damages to the Claimant. I have considered the nature and extent of the Claimant's injuries and the evidence of the pain and suffering he endured, the loss of amenities he suffered, his resulting disabilities from the assault and battery and the effect on his pecuniary prospects. I have found the following cases to be particularly helpful for guidance in considering the range of awards for assault and battery:

- (1) **Gabriel v John**:³ The defendant struck the claimant in the face with a four-foot-long fluorescent light tube, then he impaled the claimant in the abdomen with the sharp edges the broken fluorescent tube. The claimant's abdomen was punctured. He suffered a laceration of the liver, a two-inch scar at the point of entry of the fluorescent tube into his abdomen, a scar on his abdomen where life-saving surgery was

³ SLUHCV2011/0210 (delivered 17th January 2012, unreported).

performed on him, a cut below the right eye, decreased vision in the right eye and scarring below the right eye. The claimant experienced pain due to the puncturing of his abdomen and bled profusely after. He spent 10 days in hospital. The claimant pleaded no loss of amenities. In 2012 the Claimant was awarded general damages in the sum of \$23,000.00.

(2) **Yohanna George v Vernon O'Brien**:⁴ The Claimant was beaten and assaulted by the Defendant whilst walking over a bridge during a carnival parade. She was hit with a baton, dragged across the bridge, thrown into the backseat of a police vehicle, slapped across her face, dragged from the vehicle to the police station and kicked and punched. Her injuries included pain on minimal movement, ambulation difficulties, frontal tenderness of the head, cervical spine tenderness, hyperpigmented erythematous area in left scapular and base of neck, supra pubic and lower abdominal wall tenderness and tenderness right and left thigh. The court also concluded that there was clear evidence that the claimant suffered injury to feelings, indignity, disgrace and humiliation. She was awarded general damages in 2013 in the sum of \$25,000.00 for assault and battery inclusive of an uplift for aggravated damages.

(3) **Viana Longville v Windjammer Landing Company Limited et al**,⁵ The Claimant sustained injuries during the course of her employment when the glassware she was washing broke and cut the side of her wrist. Her injuries included: a 10 centimeter laceration to the front of her left wrist with multiple tendon injuries and arterial injury; complete division of the ulnar artery some 3 cm from the wrist joint; complete division of the flexor carpi's ulnaris, almaris longus and flexor carpi radials tendons some 4 centimeters from the wrist joint; complete division of the flexor digitorum profundus and flexor digitorum superficial tendons to each of the fingers; and a less than 30% division of the flexor policis longus. The Claimant underwent a surgical procedure and was

⁴ DOMHCV2010/0013 (delivered 15th April 2013, unreported).

⁵ SLUHCV2016/0404 (delivered 13th March 2017, unreported).

discharged two days post-surgery with scheduled outpatient follow up consultations. Her left forearm was placed in plaster of Paris cast for a period of 4 weeks post-surgery. The claimant's left wrist was reported as stiff and had reduced flexion range; the joints of her fingers were stiff and full flexion was not possible resulting in the inability of the finger tips touching the palm of the left hand. She also had decrease of sensation along the median nerve with diminished sensation along the radial nerve as the nerve was partially or completely severed. Physiotherapy did not restore full finger flexion. The Claimant was unable to perform her tasks as a housekeeper or engaged in sporting or leisure activities for a minimum of eight (8) weeks from the date of the injury. She was a national netballer and could no longer participate in the sport due to her deformity. The Claimant was awarded general damages for pain and suffering and loss of amenities in the sum of \$40,000.00. For loss of future earning capacity, she was awarded \$84,000.00

- (4) **Jude Jack v The Attorney General et al:**⁶ The Claimant was shot in the toe by a police officer and in the back. He was kicked three times on the left of his shoulder by unnamed officers. He sustained a flesh wound and was admitted to hospital where surgery was performed on him. In 2010, the Claimant was awarded general damages in the sum of \$15,000.00.
- (5) **Charlesworth Morancie v Marlon Guiste et al:**⁷ The claimant instituted a claim against the defendant for damages for assault and battery on the claimant by the 1st defendant, who was a minor at the time. The 1st defendant had violently assaulted the claimant with a cutlass, inflicting wounds to both his arms. The claimant's left wrist and forearm were permanently deformed and four of his fingers were severed from his right hand. The court awarded the claimant general damages in the sum of \$100,000.00 for pain, suffering and loss of amenities.
- (6) **Howell Fontenelle v Jn. Baptiste Marville:**⁸ The claimant suffered injuries as a result of an attack on him by the Defendant with a hoe. As

⁶ GDAHCV2006/0351 (delivered 15th September 2010, unreported).

⁷ DOMHCV2002/0291 (delivered 10th September 2012, unreported).

⁸ SLUHCV2011/0837 (delivered 12th December 2017, unreported).

in the instant case, the claimant's injuries were (a) 5 cm oblique laceration on the dorsum (back of the hand) of the right wrist involving the capsule (joint) of the wrist, (b) extensor tendon laceration to the Claimant's 2nd, 3rd and 4th fingers (index, middle, and ring), (c) 5 cm superficial lacerations on the mid-ventral surface of the left forearm and (d) open fracture of the left radius. The Claimant was hospitalized for one day and was referred for orthopaedic review. It was estimated that the Claimant would suffer permanent disability of 20% because of anticipated stiffness. No evidence of loss of amenities was provided to the court in terms of how the claimant's day-to-day living was affected by his injuries. An award of as \$40,000.00 in 2017 as general damages for pain and suffering.

Discussion

General Damages

[31] The Claimant seeks general damages for the assault and battery in the sum of \$135,000.00. In her written submissions for each factor the court should consider in its award of general damages for personal injuries, learned counsel for the Claimant suggest the following awards for the Claimant:

- (a) The sum of \$90,000.00 for the nature and extent of injuries suffered;
- (b) The sum of \$45,000.00 for pain and suffering endured;
- (c) The sum of \$20,000.00 to \$25,000.00 for loss of amenities suffered;
- (d) The sum of \$12,000.00 for loss of pecuniary prospects.

[32] The Defendants in their written submission have suggested an award of general damages in the sum of \$60,000 for pain, suffering and loss of amenities.

[33] It is recognized in our jurisdiction that in considering 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.”⁹ 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”.

[34] In **Bonny Alexander v Stanislaus James**,¹⁰ Actie M stated:

“An award for general damages is not strictly for the injuries sustained, but for the pain and suffering and the loss of amenities which resulted from them. Where multiple injuries are sustained there will be an immediate loss of amenities and an accumulation of pain and suffering. The pain and suffering and loss of amenities may develop to either a greater or lesser degree to the individual. Each case will be tailored to its specific facts and considered with a view to determining a figure which reflects the combined effect of the injuries.”

[35] The Court therefore does not take an itemized approach as was set out in the Claimant’s written submissions, but considers the global award of general damages for pain, suffering and loss of amenities against the guiding principles that were adopted from **Cornilliac v St Louis**.

[36] The Claimant suffered serious injuries as a result of being struck with a cutlass during the altercation. He had to undergo surgery and was hospitalized for 10 days. He suffered damage to the tendons connected to his fingers on his right hand, and nerve damage in his hand. The Claimant is right-handed. His injury has affected the use of his right-hand, resulting permanent disability in the hand. The Claimant’s ability to flex his fingers in his right hand and hold items with that hand has been affected permanently. The Claimant has also given evidence, which this court accepts, that his injury has affected his ability to perform construction work and to play sports, specifically, cricket. The Claimant also has permanent scarring from the cutlass wounds.

[37] I am in agreement with learned counsel for the Defendants that the injuries received by the Claimant in the present case are comparable to that of the

⁹ Kathleen McNally v Eric Lotte and CITCO (BVI) Ltd. BVIHCV2001/0068 (delivered 2nd July 2003, unreported)

¹⁰ SLUHCV2017/0280 (delivered 9th March 2018, unreported).

Claimant in **Howell Fontenelle v Jn. Baptiste Marville**; however it must be noted that the Claimant in this case spent 10 days in hospital and the claimant in **Howell Fontenelle** was only hospitalized for one day. The most obvious difference however, is that no evidence of loss of amenities was placed before the Court in **Howell Fontenelle**, and no award of damages was made in that respect. In the present case, the Claimant has given evidence of loss of amenities he suffered.

[38] As it relates to the case of **Charlesworth Morancie v Marlon Guiste et al**, although the facts of the case are somewhat similar, I consider that the injuries sustained by the claimant in that case were greater than the injuries sustained by the Claimant in the present case which has resulted in a relatively high award of general damages of \$100,000.00. The award was made in 2012 and would likely be even higher today.

[39] The case of **Viana Longville v Windjammer Landing Company Limited et al** also offers useful comparisons to the present case. The claimant in that case also suffered nerve damage in her hand because of the cuts she received from the broken glass and had reduced finger flexion. She also had to undergo surgery but was discharged two days post-surgery.

[40] Having considered the Claimant's injuries, his resulting disabilities, the pain and suffering endured, the loss of amenities he suffered and the effects of the injuries on his pecuniary prospects, and having considered the above cases, I would award the Claimant general damages of \$40,000.00 for pain and suffering and \$30,000.00 for loss of amenities suffered also considering the effect on his pecuniary prospects. I consider this to be fair and reasonable compensation for the Claimant.

Special Damages

[41] It is well established so as to be considered trite that special damages must be strictly pleaded, and proved. **Mc Gregor on Damages**¹¹ states:

¹¹ 18th Edition at 44-012.

“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.”

[42] In his statement of claim, the Claimant pleaded and claimed special damages broken down as follows:

(i) Medical Services	\$350.00
(ii) X-ray	\$30.00
(iii) Loss of earnings	\$21,600.00
(iv) Medical Report	\$840.00
(v) Consultation	\$140.00
(vi) Cost of return Ticket to Trinidad	\$731.58
Total	\$23,691.58

[43] The Claimant has provided evidence of his expenses in relation to his claim of \$350.00 for “medical services”, \$30.00 for x-ray fee, \$840.000 for medical report and \$140.00 for consultation, all supported by receipts or other documentary evidence. I consider that each of these items has been properly pleaded and proved.

[44] As it relates to the Claimant’s claim for the cost of a return ticket to Trinidad in the sum of \$731.58, the Claimant stated in his witness statement that on or about 1st August 2016, he travelled to Trinidad for recuperation and medical treatment. He stated that he was admitted to the hospital as he was experiencing excruciating pain from the injuries. He stated that the back slab was removed by a Medical Doctor on even date and he spent one day in the hospital.

[45] There is nothing in the Claimant’s evidence or the expert evidence of Dr. Noel that would suggest that the Claimant had to travel overseas for medical treatment. The Claimant has set out no basis for why he had to travel to Trinidad to have the back slab on his hand removed and for physiotherapy. The expert report of Dr. Noel also gives no reasons as to why the Defendant would be

expected to travel overseas to have the back slab removed and do physiotherapy. Dr. Noel simply stated in his report that:

“A back slab was removed in Trinidad on 1/8/16. He did his own physiotherapy. He worked part time in Trinidad supervising. He returned to Grenada and returned to farming in April 2017.”

- [46] In **Terrance Amedee v Marcus Modeste**,¹² Michel JA noted that a claimant is not under a duty to mitigate as is often stated, rather, a defendant is liable for losses occasioned by his actions. As was put by Sir John Donaldson MR in the English Court of Appeal decision in **The Solholt**:¹³

“A Plaintiff is under no duty to mitigate his loss, despite the habitual use by lawyers of the phrase ‘duty to mitigate’. He is completely free to act as he judges to be in his best interests. On the other hand, a defendant is not liable for all loss suffered by the plaintiff in consequence of his so acting. A defendant is only liable for such part of the plaintiff’s loss as is properly caused by the defendant’s breach of duty.”

- [47] I am not of the view that the Defendants should be liable for the costs of the Claimant’s travel to Trinidad, as based on the evidence before the Court, the Claimant has not demonstrated that this expense has been reasonably incurred. Further, the Defendant has not furnished the Court with proof of the expenditure, which could be readily obtainable, although this would not prevent the Court from making an award to the Claimant if satisfied that the sums were reasonably incurred.

- [48] The Claimant sought to evidence further expenses in his witness statement for transportation to the Crochu Medical Centre and the purchase of soft ball for physiotherapy. These items of special damage were not pleaded in the Claimant’s statement of claim and he is therefore not entitled to recover these sums.¹⁴

Gratuitous Care

¹² SLUHCVP2022/0001 (delivered 9th November 2023, unreported) at para. 42.

¹³ [1983] Lloyd’s Rep. 605 at 608.

¹⁴ See: *Carl Webster v Historic Beacon Point Anguilla Ltd.* AXAHCVP2020/0020 (delivered 21st June 2023; re-issued 19th September 2023, unreported).

[49] The Claimant has also sought the nominal sum of \$1,000.00 for gratuitous care. The Claimant's evidence was that after the surgery, he was unable to lift or straighten his right hand. He further stated that when he was discharged from hospital and when he returned home his girlfriend had to assist him with bathing and doing everyday tasks as he was unable to do so for himself for approximately six weeks. He stated that he did not pay her, but the type of care he received, if he were to pay a professional caregiver it would be approximately \$1,000.00 per month.

[50] The Claimant's father also stated in his witness statement that the Claimant's then girlfriend helped take care of him and nurse him and that his immediate family members including his mother, siblings and himself, also contributed to the Claimant's well-being by cooking for him and making financial provisions where necessary.

[51] It is noted that the Claimant was discharged from hospital on 11th July 2016. The Claimant stated that he travelled to Trinidad on 1st August 2016. This would be three weeks after being discharged from hospital. This is inconsistent with the Claimant's evidence that he had to be cared for by his then girlfriend for approximately 6 weeks. There is no indication that the Claimant's then girlfriend travelled to Trinidad with him and cared for him there for a further three weeks. The Claimant's father's evidence was that the Claimant was cared for by his then girlfriend and "sometime after" he travelled to Trinidad.

[52] The learned authors of **Halsbury's Laws of England**¹⁵ state:

"Where the injured plaintiff is cared for, not by professional, paid carers, but by volunteers, whether members of his family or otherwise, the award of damages will reflect the value of the services provided. The value of such gratuitous services may be determined either by applying the cost of buying such care on the open market, or by assessing the loss of income suffered by a carer who has given up paid employment to care for the plaintiff, or a combination of the two. A plaintiff who receives damages for services rendered by another holds the relevant amount on trust for that other."

¹⁵ (4th Edn reissue) vol 12 (1), para 898.

[53] Awards for gratuitous care are not reserved only for very serious cases, however the care given must be over and above the care that would be given in normal family life.

[54] In the present case, I accept the evidence of the Claimant that his then girlfriend provided nursing care to him following his discharge from the hospital and that his other family members provided assistance to him and that such care was necessary following his discharge. However, based on the Claimant's evidence, the period of which he received assistance from his then girlfriend and family would have been the three weeks after he was discharged from hospital and before he travelled to Trinidad. I would therefore award the nominal sum of \$500.00 for gratuitous care.

Loss of Earnings

[55] The Claimant claims special damages for loss of earnings in the sum of \$23,691.58. In his statement of claim, the Claimant pleaded that at the time of the incident, he was employed as a building contractor, earning a gross daily income of \$180.00 and as a result of the incident, he was unable to work for approximately four months, thereby suffering loss of income.

[56] In his witness statement, the Claimant stated that as a result of the injuries he sustained, he was unable to do any lifting or strenuous work for about two years. He stated that at the time of the incident, he was employed as a construction worker with Rennie Brathwaite earning \$180.00 per day, the sum of \$5,040.00 per month. In support of this claim, the Claimant provided a single salary slip from Rennie Brathwaite stating "for home construction". The slip names the Claimant as the employee, it states that the Claimant received a gross salary of \$180.00 a day for 5 days work and states the Claimant's net salary as \$900.00.

[57] In his witness statement, the Claimant further stated that he also did part-time farming privately with his parents earning approximately \$3,000.00 per month from the sale of cash crops. He stated that as a result of the incident, he was unable to return to construction work and had to take on farming full-time.

- [58] In the written submissions filed on behalf of the Defendants, learned counsel for the Defendants argued that the Claimant has failed to provide sufficient evidence in support of his contention of permanent and continuous employment or that his pay was consistent to support his claim to substantiate the amount of wages earned in the relevant period. I agree.
- [59] The Claimant has not provided any documentation to support a monthly salary of \$5,040.00. He provided evidence of his earnings for a five-day period doing construction. It is therefore apparent that the Claimant is paid for a day's work, but the Claimant has not provided evidence of his monthly earnings prior to the accident, but rather a snap shot representing 5 days' work. The evidence the Claimant has placed before the Court does not allow the Court to make a precise determination of the Claimant's pre-trial loss of income, however, it is accepted that the Claimant has suffered loss of earnings and the difficulties in determining the loss does not mean that the Court should not make an award to the Claimant. I do not consider it to be reasonable to conclude that the Claimant earned the sum of \$180.00 every day each month. It is evident that the Claimant was paid per day and given the contingencies of the construction industry, and as is reflected by the evidence, it would appear that the Claimant is paid for a 5-day work week.
- [60] In the absence of any evidence to the contrary, the Court would accept that the Claimant would have lost income working in construction following the incident with the Defendants. Based on the nature and extent of the Claimant's injuries, I would accept that it would be reasonable to conclude that the Claimant could not work in construction for approximately four months.
- [61] I would estimate the Claimant's earnings from construction to average \$3,600.00 per month based on a 5-day work week for 4 weeks using a daily rate of \$180.00. Therefore, I would estimate the Claimant's loss of income from his construction work for a four-month period at \$14,400.00 and would accordingly award him this sum.

Interest

- [62] As it relates to interest, the Court will follow the guidance of the Court of Appeal in **Alfonso v Ramnath**¹⁶ and **Terrance Amedee v Marcus Modeste**.¹⁷ Interest on general damages shall be at the rate of 6% per annum from the date of the filing of the Claim to the date of this decision and at the rate of 3% per annum on special damages from the date each loss was sustained to the date of this decision. Post judgment interest shall be at the rate of 6% per annum.

Costs

- [63] The Claimant is entitled to costs on the prescribed basis in accordance with rule 65.5 of the **Civil Procedure Rules (Revised Edition) 2023** and appendices B and C having obtained a default judgment.
- [64] On 14th December 2023, following the withdrawal of an application to be removed from the record as acting for the Defendants which had been set down for hearing after vacating the date fixed for the assessment on 28th November 2023, the Court ordered that the costs of the adjournment of the assessment would be considered at the assessment. In accordance with that order, the Court would award the Claimant the sum of \$350.00.

Disposition

- [65] In light of the forgoing, I would make the following orders:

- (1) The Defendants shall pay the Claimant the following:
 - a. General damages for assault and battery in the sum of \$70,000.00 together with interest at the rate of 6% per annum from the date of the filing of the claim to the date of this order.

¹⁶ (1997) 56 WIR 183.

¹⁷ SLUHCVP2022/0001 (delivered 9th November 2023, unreported).

- b. Special damages in the sum of \$1,360.00 together with interest at the rate of 3% per annum from the date of each expense (\$350.00 for “medical services”, \$30.00 for x-ray fee, \$840.000 for medical report and \$140.00 for consultation) to the date of this order.
- c. Loss of earnings in the sum of \$14,400.00 together with interest at the rate of 3% per annum from the date of the incident to the date of this order.
- d. The sum of \$500.00 for gratuitous care together with interest at the rate of 3% per annum from the date of the incident to the date of this order.
- e. Post judgment interest at the statutory rate of 6% per annum until payment in full.
- f. 60% of prescribed costs on the global award of \$86,260.00 in accordance with rule 65.5 of the **Civil Procedure Rules (Revised Edition) 2023** and appendices B and C to Part 65 of the **Civil Procedure Rules (Revised Edition) 2023** in the sum of \$9,263.40.
- g. Costs for the adjournment of the 28th November 2023 assessment of damages hearing in the sum of \$350.00.

(2) The Claimant shall have carriage of this order.

[66] I wish to thank learned counsel on both sides for their helpful oral and written submissions.

Carlos Cameron Michel
Master

By the Court

Registrar