

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

**GRENADA**

**CLAIM NO. GDAHCV2022/0044**

**BETWEEN:**

**BRENDAN BRIGGS**

Claimant

**and**

**NICKESCHA GILKES**

Defendant

**Appearances:**

Mr. Jerry Edwin for the Claimant

Ms. Nichole St. Bernard for the Defendant

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2024: June 3, 6.

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**ORAL DECISION**

- [1] **MICHEL M:** This is an assessment of damages on the Claimant's claim for damages for personal injuries suffered by the Claimant when he was hit by a vehicle said to be negligently driven by one Wayne Francis and owned by the Defendant.
- [2] The accident occurred on 7<sup>th</sup> February 2020. At the time of the accident, the Claimant was seated outside of a bar when Wayne Francis was maneuvering the Defendant's vehicle in reverse and hit the Claimant. The Claimant was initially rendered unconscious and was conveyed to the hospital by ambulance and was admitted to hospital for seven days.

- [3] The Claimant subsequently commenced these proceedings against the Defendant by claim form and statement of claim filed on 3<sup>rd</sup> February 2022. No acknowledgement of service or defence was filed by the Defendant to the Claimant's claim and default judgment was entered for the Claimant on 5<sup>th</sup> April 2022 for an amount to be decided by the Court.
- [4] The issue of liability having been crystalized by the default judgment, the only matter for the court's consideration is the quantum of damages on the Claimant's claim. The Defendant has opted to participate on the assessment and may seek to dispute any issue in relation to quantum in so far as it is not inconsistent with the liability concluded on the Claimant's claim by the default judgment.
- [5] I will first consider the issue of general damages.

### **General Damages**

- [6] It is well settled that in assessing general damages, the court has to 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.<sup>1</sup>

### **Nature and Extent of Injuries Suffered**

- [7] The Claimant was born on 12<sup>th</sup> December 1974. He was 45 years old at the time of the accident. His injuries are detailed in the expert medical report of Dr. Douglas Noel.
- [8] After the Claimant was hit by the Defendant's vehicle he was transported to the hospital and apparently loss consciousness on route. He was assessed at the casualty ward of the Hospital and later had to undergo surgery to his left leg.
- [9] As a result of the accident, the Claimant sustained soft tissue injuries to the nose, left temporal region, right iliac region (junctional area between the torso

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<sup>1</sup> See *Cornilac v St Louis* (1965) 7 WIR 491.

and the thigh) and a comminuted fracture to the left proximal tibia with an extensive abrasion to the left leg. The laceration on his left temple was sutured, his wounds were dressed and a back slab was applied to his left lower limb. He was admitted to the male surgical ward where he was observed and received medication. The Claimant spent seven days at the hospital before being discharged

### **The nature and gravity of the resulting physical disability**

- [10] In his expert report, Dr. Noel first reported on his examination of the Claimant on 15<sup>th</sup> December 2020. Dr. Noel noted that the Claimant's soft tissue injuries to the nose and left temporal region have healed. However, Dr. Noel noted that the Claimant has permanent abrasion scars to the right iliac region and left leg. Dr. Noel reported that the Claimant walks with a limp and has pain in the left leg and that he expects the limp to continue on and off depending on the pain. He opined that the pain in the Claimant's left lower limb may continue on and off in the future according to walking or standing for long period or with squatting or kneeling or twisting movements. He further opined that the pain in the right side of the Claimant's pelvis may continue on and off with twisting movements.
- [11] On examination of the Claimant on 29<sup>th</sup> March 2023, Dr. Noel noted that the Claimant still complains of occasional pain in the left leg if he twists or if the weather is damp or humid. He also noted that the Claimant can no longer play basketball or competitive football. Dr. Noel's prognosis of the Claimant remained the same as in his earlier examination of the Claimant.

### **Pain and Suffering Endured**

- [12] The pain and suffering the Claimant endured is detailed in his "corrected" witness statement filed on 9<sup>th</sup> October 2023. Quite properly, the Claimant ought to have filed a supplemental witness statement to clarify any matter filed in his original witness statement.
- [13] The Claimant stated that he was admitted to the hospital after the accident and woke up the following day in the hospital in severe pain. He stated that the pain

radiated through his left leg and was throughout his pelvis and waist and he had severe painful feeling in his face as well.

### **Loss of Amenities Suffered**

[14] In his witness statement, the Claimant explained that there was no way he could work after the accident. He explained that he needed assistance even at home. He stated that he needed assistance with washing and cooking and even to move around and to get groceries and necessary supplies for his daily living. He stated that he needed that kind of assistance from the time of the accident to August 2020.

[15] The Claimant's ability to play sports in the future was also affected by the accident and this is detailed in Dr. Noel's expert report.

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

[16] The Claimant stated in his witness statement that as a result of the accident he was put on sick leave from the date of the accident to December 2020. No evidence of the sick leave was provided with his witness statements, although sick leave certificates accompanied his application for the assessment of damages. The Claimant stated that prior to the accident, he earned about \$4,346.50 monthly from the operations of his bar, however, as a result of the accident, he was unable to work for at least 10 months. He stated that he lost income in the total sum of EC\$43,465.00.

### **Award for General Damages**

[17] 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.

[18] Learned counsel for the Claimant did not submit any cases to the court for comparison to specifically to address the question of general damages for pain suffering and loss of amenities, however, the following cases were submitted by counsel for the Defendant:

- (1) **Fae Ann James v Randy Thomas**:<sup>2</sup> The claimant was struck by a car whilst attempting to cross the road. She was 7 years old at the time of the accident. She sustained a displaced fracture of the left distal tibia and fibula for which she underwent surgery. An above-knee cast was applied and she was discharged from hospital three days later. She was still unable to stand or walk independently and had to be carried in order to get about. She was also unable to attend school for the remainder of the school term. In September 2017, an award of \$45,000.00 was made for pain and suffering. In making the award the court took into account the young age of the claimant and noted the lack of evidence as to the claimant's loss of amenities.
- (2) **Ronald Woods v Irvin Joseph**:<sup>3</sup> The claimant was a pedestrian when he was struck by a motor vehicle being driven by the defendant. He sustained multiple lacerations to the face, and elbow. His left leg was fractured in two places. His left leg was surgically repaired and he was hospitalized for nine days. The accident left her with a permanent limp. The claimant was awarded the sum of \$40,000.00 for pain and suffering in August 2007.
- (3) **Deborah Jules v Felix Emerson Hutchinson et al**:<sup>4</sup> Following a collision, the Claimant sustained among other severe injuries, a fracture of the right distal tibia, fracture of the right fibula, fracture of the right distal radius, degenerative changes in the lumbar spine, permanent limp and laceration to the right eyelid. The Claimant walked with a limp and experienced pain in her leg when she walked a long distance but this was expected to improve with time and rehabilitation. In August 2018, the Claimant was awarded general damages of general damages

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<sup>2</sup> GDAHCV2016/0186 (delivered 28<sup>th</sup> September 2017, unreported).

<sup>3</sup> Saint Vincent and the Grenadines High Court Claim no. 506 of 2005 (delivered 31<sup>st</sup> August 2005, unreported).

<sup>4</sup> SLUHCV2015/0887 (delivered 17<sup>th</sup> August 2018, unreported).

of \$65,000.00 consisting of \$40,000.00 for pain and suffering and \$25,000.00 for loss of amenities.

[19] I have also considered the following cases from own research:

(1) **Sherma Mathurin v Rain Forest Sky Rides Ltd**:<sup>5</sup> This case was referred to in the **Deborah Jules** decision. The claimant suffered a displaced intra-articular open fracture of the low end of the right tibia with a fracture of the fibula; multiple grazes and bruises to the forehead and right upper limb. She underwent surgery for the internal fixation of plates and screws along with bone grafting of the fracture. She developed arthrosis of the right ankle and had to seek medical treatment in Martinique. The claimant's permanent impairment of the right hind restricted her ability to walk long distances, standing for prolonged periods, walking on inclined surfaces or even wearing shoes with heels. In 2010 the sum of \$150,000.00 was awarded for general damages.

(2) **Ann Robertson v The Attorney General**:<sup>6</sup> The Claimant was struck on the leg with a heavy-duty roller. She was 70 years old at the time. On examination, it was revealed that the Claimant had a deep extensive wound with irregular edges on the medial aspect of her left leg with exposure of bone. X-rays subsequently revealed that she had an open fracture to the left fibula and tibia as well as abrasions on the same leg. The Claimant was awarded general damages of \$60,000.00, consisting of \$45,000.00 for pain and suffering and \$15,000.00 for loss of amenities.

[20] I have had regard to all of the above cases and considered the cases submitted by learned counsel for the Claimant on the other aspects of the Claimant's case. It would be immediately obvious that the injuries received by the claimant in **Sherma Mathurin v Rain Forest Sky Rides Ltd** were more severe than the Claimant in the present case which is reflected in the comparatively higher award. I have however found the other above cases most helpful as they provide

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<sup>5</sup> SLUHCv2008/0551 (delivered 3<sup>rd</sup> August 2010, unreported).

<sup>6</sup> GDAHCv2009/0338 (delivered 20<sup>th</sup> October 2010, unreported).

useful guidance for a comparable award. I consider that the injuries sustained in these cases and the Claimant in the present cases are broadly similar. I have had regard to the vintage of the awards, the difference in ages of the claimants and the evidence of the loss of amenities suffered. Having considered the expert medical evidence on the Claimant's injuries, the evidence of the Claimant on the pain and suffering he endured and the expert's and the Claimant's evidence on the loss of amenities the Claimant suffered, and having regard to the comparable award from the OECS, I believe that an award of \$35,000.00 for pain and suffering and \$25,000.00 for loss of amenities is fair and reasonable compensation to the Claimant.

### **Special Damages**

- [21] It is well established so as to be considered trite that special damages must be strictly pleaded, and proved. **Mc Gregor on Damages**<sup>7</sup> states:

“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.”

- [22] The Claimant claimed special damages broken down as follows:

|                        |             |
|------------------------|-------------|
| Medication             | \$278.00    |
| X-ray fees             | \$150.00    |
| CT scan                | \$2,100.00  |
| Medical consultations  | \$250.00    |
| Medical Reports        | \$750.00    |
| Transportation         | \$825.00    |
| Pre-action legal costs | \$850.00    |
| Loss of Income:        | \$42,000.00 |

- [23] Although the Claimant has pleaded the above as particulars of special damages, save and except for loss income, he has not provided any evidence, whether documentary or otherwise to support the expenses. In my view however, given the nature of the accident and the nature and extent of the Claimant's injuries, the expenses in relation to medication, x-ray fees, CT scans, medical consultations, medical reports and transportation all appear to be reasonably

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<sup>7</sup> 18<sup>th</sup> Edition at 44-012.

incurred. In the absence of any evidence to the contrary, I would award the sums claimed in respect of those items of special damage.

- [24] As it relates to the sum of \$850.00 for pre-action legal costs, I am of the view that this item required greater particularity and proof for an award to be made. In any event, legal costs are properly accounted for under any costs award made under the claim pursuant to rule 65.5 of the **Civil Procedure Rules (Revised Edition) 2023** ("CPR"). CPR 64.2 defines 'costs' as including, inter alia, 'a legal practitioner's charges and disbursements.'
- [25] The Claimant has sought to claim the sum of \$42,000.00 for loss of income. He gave evidence that prior to the accident, he earned about \$4,346.50 monthly from the operations of the bar, but that because of the accident he was unable to work for at least 10 months, until December 2020. To support those earnings, the Claimant provided a list that the Court can only assume represents the income generated by the Claimant for a month from the operations of the bar.
- [26] Under cross-examination, it was revealed that the Claimant's sister is the registered owner of the bar the Claimant operates. The Claimant also gave evidence that his sister assisted in the operations of the Bar.
- [27] Learned counsel for the Defendant submitted to the Court that on the 25<sup>th</sup> March 2020 a State of Emergency was declared in Grenada pursuant to the Emergency Powers (COVID-19) Proclamation S.R.O 12 of 2020. Further, pursuant to Section 5 of the Emergency Powers (COVID-19) Regulations S.R.O. 13 of 2020, all non-essential businesses in Grenada were closed. She submitted that businesses such as the Defendant's bar were not listed as an essential or excepted business under the said section 5 or the ultimately expanded list contained in section 5 of the Emergency Powers (CoVID-19) No. 15 Regulations SRO 46 of 2020 and therefore his business could not by legal mandate be operational from the 25<sup>th</sup> March 2020 up to the 22<sup>nd</sup> December 2020 when pursuant to section 6 of the Emergency Powers (Covid-19) (proclamation No.3) SRO 74 of 2020 all businesses , establishments and offices were permitted to commence, continue or resume business operations in Grenada.



[28] This submissions was not challenged by learned counsel for the Claimant. The Court also notes the Claimant's own evidence as it relates to the operations of his business during the COVID-19 pandemic in 2020. In his witness statement, the Claimant states that he needed assistance at home and with washing and cooking and to move around and to get groceries and other supplies for his daily living. He stated that he needed this kind of assistance up to August 2020. He further states that because of his injuries coupled with the pandemic, he was not able to re-open his shop until December 2020. The Claimant's own evidence therefore points to an inability to operate his bar at that point in time due to the pandemic, which is consistent with the submissions of learned counsel for the Defendant.

[29] The Claimant's evidence also demonstrates that he only really needed assistance with daily activities up to August 2020. The Claimant did not provide any further evidence as to how his injuries would have affected his ability to work from August 2020 onwards.

[30] In **Terrance Amedee v Marcus Modeste**,<sup>8</sup> Michel JA noted that a claimant is not under a duty to mitigate as is often stated, rather, which it is important to note for this assessment, is that 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**:<sup>9</sup>

**"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."** (Emphasis added).

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<sup>8</sup> SLUHCVP2022/0001 (delivered 9<sup>th</sup> November 2023, unreported) at para. 42.

<sup>9</sup> [1983] Lloyd's Rep. 605 at 608.

[31] Two things arise from the statement, based on the regulations presented to the Court and the Claimant's own evidence and admission, he would have been unable to operate his bar during the period the regulations were in effect and would not have generated the monthly income from the bar as stated in his evidence. Secondly, in my view, the Defendant could not have properly be said to be liable for loss of income from the Bar for 10 months after the accident in circumstances where, (if the Claimant were able to lawfully operate the Bar), he would have the assistance of his sister, or could have engaged other assistance to mitigate any losses, rather than take no action to have the bar generate income.

[32] Thirdly, the Defendant's evidence as to the income generated from his bar is woefully lacking in circumstances where he would have been able to provide better particulars of the income he generated from the Bar. Notwithstanding, in the absence of evidence to the contrary, the Court can apply its mind judiciously to determine whether the losses from the business were reasonably incurred. I believe that as a snapshot in time, the income generated is reasonable, but given the uncertainties of business, over a longer period of time, greater particularity would have been needed.

[33] In light of the foregoing, accepting that the Claimant would only have been able to operate his bar lawfully after the accident up to 25<sup>th</sup> May 2020 when the emergency measures came into effect, and accepting the claimant's evidence as to the monthly income generated from the bar for monthly period immediately before the accident, I would award the Claimant loss of income for a period of two months in the sum of \$8,693.00

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

(1) The Defendant shall pay the claimant the following:

- (i) General damages for pain suffering and loss amenities in the sum of \$60,000.00 together with interest at the rate of 6% per

annum from the date of service of the claim form to the date of this order.

- (ii) Special damages in the sum of \$13,046.00 together with interest at the rate of 3% per annum from the date of the accident to the date of this order.
- (iii) Post judgment interest at the statutory rate of 6% per annum until payment in full.
- (iv) 60% of prescribed costs on the global award of \$73,046.00 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 \$8,074.14.

[35] I wish to thank learned counsel for the parties for their helpful written and oral submissions.

**Carlos Cameron Michel**  
**Master**

**By the Court**

**Registrar**