

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

COMMONWEALTH OF DOMINICA

DOMHCVAP2012/0017

BETWEEN:

PETER WINSTON

Appellant

and

DIANNE TELEMACHE

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mde. Gertel Thom
The Hon. Mr. Sydney A. Bennett

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mrs. Gina Dyer - Munro with Mrs. Zena Moore - Dyer for the Appellant
The Respondent in person

2022: April 25 and 26;
2023: May 25.

Civil Appeal – Personal Injury – Assessment of Damages – Special Damages – Whether the judge ought to have found the items which had been claimed as special damages to have been proved – Pain and Suffering and Loss of Amenities – Whether the judge erred in assessing damages for loss of amenities – Future Loss of Earnings – Whether the judge erred in assessing damages for future loss of earnings by failing to properly consider the medical report – Interest – Pre-Judgment Interest – Whether the judge erred in not awarding pre-judgment interest

On 27th March 2002, the appellant, Peter Winston (“the appellant”) sustained personal injuries in a motor vehicle accident. At the time of the accident the appellant had been

employed as a Customs and Excise Officer performing guard duties. The respondent, Dianne Telemacque ("the respondent") was completely responsible. Consequently, judgment was entered in the appellant's favour on 1st December 2006.

As a result of the collision, the appellant suffered an injury to his spine. The MRI showed evidence of an annular tear at L 4/5 level and disk protrusion causing right lateral recess stenosis. At L5/S1 level there was also mild diffused annular bulging with minimal narrowing of the right lateral recess a potential site for nerve root irritation or recess. Dr. Henry Bedaysie, a consultant neurosurgeon performed surgery on him in July 2008. Up to that time he endured extreme pain which had not been alleviated by rounds of physiotherapy, chyroblocks, acupuncture or spinal manipulation. He achieved 60% improvement after surgery but continued to require treatment for reported myofascial pain. In 2011, following the appellant's visit for a report and follow up treatment, Dr. Bedaysie expressed the view that the appellant had by then attained maximum medical improvement. The neurosurgeon assessed his permanent partial disability at 50% and his whole person impairment at 15%.

On 10th September 2012, the learned judge, in considering the issue of assessment of damages, awarded damages in favour of the appellant in the sum of \$244,482.39 against the respondent.

Being dissatisfied with the judge's decision the appellant appealed against the assessment of the quantum of damages for his injuries and losses. The essential issues which arose for determination on appeal were: (i) Whether the judge ought to have found the items which had been claimed as special damages (i.e. damages for loss of overtime earnings and income from operating a taxi) to have been proved and if the appellant sustained such loss but failed to prove the actual amount of that loss the court should have awarded a reasonable sum; (ii) Whether the judge erred in assessing damages for loss of amenities; (iii) Whether the judge in assessing damages for future loss of earnings failed to properly consider the medical report and (iv) Whether the judge erred in not awarding pre-judgment interest.

Held: allowing the appeal in part, varying the order of the learned judge and making the orders set out at paragraph 26 of this judgment that:

1. When resolving a claim for loss of amenities, the court examines the evidence with a view to determining the extent to which the claimant's quality of life has been diminished by the injuries sustained because of the relevant incident. The judge, having heard and evaluated the evidence, is well placed to assess the credibility of the evidence proffered. The appeal court will only reverse a trial judge's findings of fact, if it is satisfied that the trial judge was plainly wrong. A judgment should be looked at in the round, particularly where the outcome depends on the judge's assessment of the credibility of the respective witnesses. A judge should not be criticised for not mentioning every item of evidence.

Elliston v Glencore Services (UK) Ltd [2016] EWCA Civ 407 applied.

2. It is trite that an appellate court would not interfere with an award of general damages unless the award is based on some wrong principle of law, or where the amount awarded is so high or so low as to make it an entirely erroneous estimate of the damage suffered by the claimant. Upon review of decisions in which similar injuries to that sustained by the appellant had been compensated by awards ranging between \$95,000 to \$100,000 it is evident that the global sum of \$40,000 for pain, suffering and loss of amenities experienced by the appellant is so low as to justify interference by this Court.

Miriam Myers vs Dickenson Bay Hotel Management Ltd DbA Sandals Antigua ANUHCV2013/0231 (delivered 6th October 2016, unreported) applied; **David Robin and another v Ulysses Auguiste and others** DOMHCV2003/0141 (delivered 25th November 2010, unreported) distinguished.

3. The fact that evidence was only disputed by way of cross examination does not necessarily mean that it must be accepted as truthful, regardless of the judge's assessment of the credibility of the evidence before him. An appellate court should only upset findings of fact by a trial judge if it is satisfied that, on evidence the reliability of which it was for him to assess, he had plainly erred in reaching his conclusions of fact.

Industrial Chemical Co (Jamaica) Ltd v Ellis [1986] 35 WIR 303 applied.

4. The jurisdiction to award pre-judgment interest arises from the original jurisdiction of the Supreme Court as stated in section 7 of the various Supreme Court Acts. In the case of Dominica, the relevant provision is section 7 (1) of the Eastern Caribbean Supreme Court (Dominica) Act. Consequently, the High Court in Dominica has the power to award pre-judgment interest notwithstanding the absence of specific statutory provision empowering it to do so.

Section 7 (1) of the **Eastern Caribbean Supreme Court (Dominica) Act** Chapter 4:02 of the Revised Laws of Dominica applied; **Martin Alphonso and others v Deodat Ramnath** [1997] 56 WIR 183 considered; **Steadroy Matthews v Garna O'Neal** BVIHCVAP2015/0019 (delivered 16th January 2018, unreported) followed; **Andrey Adamovsky et al v Andriy Malitskiy et al** BVIHCVAP2014/0022 (delivered on 3rd February 2017, unreported) applied; **The Attorney General of The Federation of St. Christopher And Nevis v SKN Choice Times Limited** SKBHCVAP2019/0045 (delivered 27th May 2022, unreported) followed.

JUDGMENT

- [1] **BENNETT JA [AG]:** This is an appeal against the order of the learned judge dated 10th September 2012 in which he awarded damages in favour of the appellant, Peter Winston (“the appellant”) in the sum of \$244,482.39 against the respondent Ms. Dianne Telemacque (“the respondent”). The appeal relates to the learned judge’s assessment of the quantum of damages for the appellant’s injuries and losses.

Background

- [2] The appellant sustained personal injuries in a motor vehicle accident on 27th March 2002. The respondent was completely responsible. Consequently, judgment was entered in the appellant’s favour on 1st December 2006.
- [3] As a result of the collision the appellant suffered an injury to his spine. The MRI showed evidence of an annular tear at L 4/5 level and disk protrusion causing right lateral recess stenosis. At L5/S1 level there was also mild diffused annular bulging with minimal narrowing of the right lateral recess a potential site for nerve root irritation or recess. Dr. Henry Bedaysie, a consultant neurosurgeon performed surgery on him in July 2008. Up to that time he endured extreme pain which had not been alleviated by rounds of physiotherapy, chyroblocks, acupuncture or spinal manipulation. He achieved 60% improvement after surgery but continued to require treatment for reported myofascial pain.
- [4] In 2011 following the appellant’s visit for a report and follow up treatment Dr. Bedaysie expressed the view that the appellant had by then attained maximum medical improvement. The neurosurgeon assessed his permanent partial disability at 50% and his whole person impairment at 15%.
- [5] At the time of the accident the appellant had been employed as a Customs and Excise Officer performing guard duties. His salary was \$1,280.35 per month (which

had increased to \$1,788.75 by April 2009. In addition to the loss of his salary he claimed to have lost overtime pay amounting to an average sum of \$1,100.00 per month. He claimed to have supplemented his earnings by operating a taxi from which he derived a further income of approximately \$14,000.00 per year.

Special damages for loss of overtime earnings and income from operating a taxi

- [6] It is fair to say that in the course of conducting the assessment of damages due to the appellant to compensate him for his injuries and loss, the learned judge came to the view that much of the evidence brought on his behalf lacked credibility or was exaggerated. The appellant had, for instance, claimed to have received no salary for the period August 2008 to April 2009. In cross examination, however, he admitted for the first time that he had received social security sickness benefits fixed at 60% of his salary and that his actual loss was actually 40% of the salary claimed. The claimed overtime was documented, not by evidence from the Accountant General's department, which would have been responsible for the documentation and payment of such overtime, but by a letter which was not on official government stationery. The judge noted that the salary slip exhibited by the appellant "...revealed absolutely no payment of overtime".¹ Ultimately the judge rejected the appellant's claims for overtime as well as for the supplemental income claimed to have been earned from the operation of a taxi.
- [7] The appellant argues that the judge ought to have found the items which had been claimed as special damages (i.e. damages for loss of overtime earnings and income from operating a taxi) to have been proved and further says that had the appellant sustained such loss but failed to prove the actual amount of that loss the court should have awarded a reasonable sum. It is clear from the judgment, however, that the judge took an adverse view of the credibility of the appellant and simply did not

¹ See *Peter Winston v Dianne Telemacque* DOMHCV2005/0029 (delivered 10th September 2012, unreported) at paragraph 5.

accept that he had sustained the losses for which special damages had been claimed.

- [8] In **Elliston v Glencore Services (UK) Ltd**² Lady Justice Gloster stated at paragraphs 23 and 24

“23. It is axiomatic that this court only very rarely reverses a trial judge’s findings of primary fact, and then only if it is satisfied that the trial judge was plainly wrong...

24. ...it is all too easy for an appellate court to criticise individual sentences or infelicities of language or reasoning of a trial judge, notwithstanding that at the end of the day his judgment on the entirety of the evidence may well have been correct. A judgment should be looked at in the round, particularly where the outcome depends on the judge’s assessment of the credibility of the respective witnesses. It should not be picked over or construed as though it were a piece of legislation or a complex commercial contract. Nor should a judge be criticised for not mentioning every item of evidence.”

Pain, suffering and loss of amenities

- [9] With regard to general damages the appellant says that the judge erred in assessing damages for loss of amenities. The basis of that complaint was that notwithstanding the fact that the learned judge had accepted that there must have been some loss suffered, he had commented on the fact that in the pleadings the appellant had averred no specific loss of amenities. The appellant says that the learned judge had dealt with loss of amenities as if such had been claimed as special which had to be specifically pleaded. Counsel for the appellant cites **Charlesworth & Percy on Negligence**³ as authority for the proposition that although general damages must be averred to have been suffered and subsequently, need to be proved, it is not necessary to plead them in any detail in the statement of case. Noting that in claims for damages for personal injuries, the particulars of claim need only include brief details of the claimant's injuries and have attached a report from a medical practitioner about the injuries. It is advanced on behalf of the appellant that the learned judge had fallen into error in assessing damages for loss of amenities by

² [2016] EWCA Civ 407.

³ 11th edn, Sweet and Maxwell 2006.

taking into account the fact that the appellant had not pleaded any specific loss of amenity.

- [10] An examination of the judgment shows that this assertion is not valid. In resolving a claim for loss of amenities, the court examines the evidence with a view to determining the extent to which the claimant's quality of life has been diminished by the injuries sustained as a consequence of the relevant incident. In the instant case the learned judge, having heard the evidence observed:

"[13] In his pleadings the claimant averred no specific loss of amenities. In his Affidavit in Support the claimant testified that his girlfriend, with whom he lived from 1997, has left him since 2010. This he attributes to his inability to provide for her financially. He says that his sexual performance has suffered. He also claims to have been an avid player of football, cricket and basketball. His playing of volleyball, cards and dominoes he says has also been curtailed. I am not clear where he would have found the time for these activities while working many hours overtime, pursuing his part time trade of taxi driver, and taking care of the many domestic chores he claims to have performed.

[14] While it may well be that the claimant's quality of life has been adversely affected by his injury, the obvious exaggeration by the claimant leaves this court hesitant to accept his evidence as to loss of amenities. The court also notes that, claims of adverse effects on his sexual performance notwithstanding, the claimant is the father of a 5-year-old son. The claimant also says that his disability now makes it necessary to have a full-time caregiver for the rest of his life. This is not supported by any of the medical opinions which have been led in evidence."⁴

- [11] It is clear from the foregoing that contrary to the submissions made on behalf of the appellant that the judge did not refuse to make an award for loss of amenities because of the appellant's failure to specifically plead the same. Rather, the judge considered the evidence proffered by the appellant as to the effect that his injuries had had on his quality of life, specifically his ability to work and earn, and on his social and domestic affairs. The appellant's case is that the injury had resulted in his inability to marry his female companion with whom he had cohabited for over 13 years, to assist her in carrying out household chores or to pay his outgoings and

⁴ Supna n. 1 at paragraphs 13 and 14.

expenses. He adverted to deterioration in his sexual performance. Subsequently his companion terminated their relationship and ceased to cohabit with him. Further he was unable to socialize with his family. The judge, having heard and evaluated the evidence, came to the conclusion that his evidence in this regard had been exaggerated and lacked some degree of credibility.

[12] More generally the appellant says that the learned judge made an award for pain, suffering and loss of amenities which was clearly too low considering the nature and extent of his injuries and his resulting physical disability. I agree. It is, of course trite law that an appellate Court would not interfere with an award of general damages unless the award is based on some wrong principle of law, or where the amount awarded is so high or so low as to make it an entirely erroneous estimate of the damage suffered by the claimant.

[13] In my view the amount awarded for damages for pain, suffering and loss of amenities in the instant case is so low as to justify interference by this Court. Here the learned judge awarded the global sum of \$40,000 for pain, suffering and loss of amenities experienced by the appellant, in this case an injury to the spine involving of an annular tear at L 4/5 level and disk protrusion causing right lateral recess stenosis and at L5/S1 level mild diffused annular bulging with minimal narrowing of the right lateral recess. These injuries had resulted in the appellant experiencing extreme pain for a prolonged period and resulting permanent impairment. The appellant was able to refer to decisions in which similar injuries had been compensated by awards ranging between \$95,000 to \$100,000. In **Miriam Myers v Dickenson Bay Hotel Management Ltd Db a Sandals Antigua**⁵ Glasgow M had arrived at an award of \$95,000 for comparable injury suffered by a claimant. In arriving at his assessment of the quantum of compensation to be awarded in the instant case the judge stated:

“[15] In the case of David Robin and another v Attorney General DOMHCV2003/0141 this court made an award for pain and suffering and loss of amenities to a claimant of \$30,000.00. That claimant suffered injuries

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

very similar to the present case and had to undergo the same surgical procedure performed by the same doctor. I am content to do likewise and award the present claimant the sum of \$40,000.00 for pain, suffering and loss of amenities.”⁶

- [14] The award of \$30,000 made in the case of **David Robin et al v Ulysses Auguiste et al**⁷ was reversed by this Court⁸ on the basis that it was inordinately low. The quantum of damages awarded under that head was increased to \$100,000.00 for injuries to the spine which the judge held to be similar to those suffered by the appellant in the instant case. For the same reason I would order that the award of \$40,000.00 made in the instant case for pain, suffering and loss of amenities be increased to \$100,000.00.

Future loss of earnings

- [15] Counsel for the appellant argues that in assessing damages for future loss of earnings the learned judge failed to properly consider the report of Dr. Bedaysie. In his report Dr. Bedaysie assessed the appellant’s whole person impairment at 15% and his permanent partial disability at 50%. The appellant complains that the learned judge took into account only the assessment of 15% whole person impairment. This criticism is misconceived. Permanent partial disability relates to an assessment of the degree to which the ability of a working person to perform at his or her full capacity has been permanently impaired. In the instant case the learned judge held at paragraphs 16 to 17 of the judgment:

“[16] The claimant has lost his ability to perform his job. His net salary was \$1,649.75. The claimant now 36 would probably have worked until he was 60. With the assistance gleaned from the authorities cited by both counsel I am content to adopt a multiplier of 13. The award under this head is therefore \$1,649.75 x 12 x 13 making \$257,361.00. But this total must be further discounted by 10% because the claimant now receives as a lump sum what he would have otherwise earned over several years.

[17] It is also necessary to fix a discount to reflect the vicissitudes of life. Counsel for the claimant suggests the rate of discount in this regard should

⁶ Supra n. 1 paragraph 15.

⁷ DOMHCV2003/0141 (delivered 25th November 2010, unreported).

⁸ See Certificate of Result of Appeal in DOMHCVAP2010/0024 dated 12th November 2015.

be 4%. No authorities were cited in support of this proposed rate. In DOMHCV2004/0268 Gemma Clarke v Roberts Nicholas and another a decision from Dominica, Master Lanns adopted a discount of 10% to "cater for the contingencies of life. I will do likewise. Discounting the sum of \$257,361.00 by 20%, gives a result of \$205,888.80 to be awarded to the claimant under this head."

It is clear that the learned judge in assessing the compensation due to the appellant, treated the appellant as having completely lost his ability to earn an income notwithstanding the evidence of Dr. Bedaysie that the appellant had sustained permanent partial incapacity of 50%. No adjustment was made to the multiplicand to reflect the fact that the appellant continued to have some residual capacity.

[16] In relation to loss of future earnings the court discounted the sum awarded by 10% to reflect the fact that the appellant received as a lump sum what he would have received over several years and by a further 10% to reflect the vicissitudes of life. The appellant says that the judge ought to have made no more than a 4% discount to reflect the latter factor. I do not disturb this aspect of the decision nor would I interfere with the learned judge's decision as to the multiplicand or multiplier used to assess this aspect of the award.

[17] The appellant also challenges the findings of fact by the court on the basis that the evidence of loss of earnings was disputed only by way of cross-examination, but that the respondent presented no evidence to contradict appellant's evidence. I see no merit in this point. The decision of the learned judge rested in part on his assessment of the credibility of the evidence before him. In **Industrial Chemical Co (Jamaica) Ltd v Ellis**⁹ the Court of Appeal of Jamaica had reversed a finding of fact made by the first instance judge and had done so on the basis that the evidence brought by the appellant in the court below had not been contradicted by any positive evidence brought by the respondent. The Privy Council set aside the decision of the appellate court, noting that:

⁹ [1986] 35 WIR 303.

“it rests upon the fallacy, sometimes propounded from the Bar, that because the sworn testimony of a witness cannot be directly contradicted by that of another witness or by contemporary documents, it must necessarily be accepted as truthful by the judge regardless of his assessment of the credibility of the witness...”¹⁰

Pre-judgment interest

- [18] Finally, the appellant states that the learned judge erred in that he did not award pre-judgment interest. The jurisdiction of the court to award interest on general damages in personal injury cases was first pronounced upon by the Court of Appeal in **Martin Alphonso and others v Deodat Ramnath**.¹¹ In that case Singh JA stated:

“The general principle is that interest ought only to be awarded to a plaintiff for being kept out of money which ought to have been paid to him. With regard to general damages, no interest should be awarded before judgment on loss of future earnings. On damages for loss of amenity and pain and suffering, interest should be awarded from the date of the service of the writ to the date of trial at the rate payable on money in Court placed on short term investment. Regarding special damages interest should be awarded for the period from the date of the accident to the date of trial at half the above rate.”

- [19] For some years after the decision of the Court of Appeal in **Alphonso v Ramnath** the jurisdiction of the courts to quantify and award pre-judgment interest continued to be debated. In **Dominica Agricultural and Industrial Development Bank v Mavis Williams**¹² the Court of Appeal held that the laws of Dominica conferred no jurisdiction on the courts to award pre-judgment interest. In arriving at that conclusion Barrow JA reasoned at paragraphs 60 to 65 that apart from statute, in the absence of express agreement, our courts do not award interest on debt or damages,¹³ that the statute which regulates the award of interest on damages is the **Judgments Act**¹⁴ and that Act provided only for interest to be awarded on judgment debt from the time of entering up of the judgment. Section 11 of the **Eastern Caribbean Supreme Court (Dominica) Act**¹⁵ provides that:

¹⁰ Ibid at 305.

¹¹ [1997] 56 WIR 183.

¹² DOMHCVAP2005/0020 (delivered 29th January 2007, unreported).

¹³ See *Jefford and another v Gee* [1970] 1 All ER 1202 at 1205 per Lord Denning.

¹⁴ Chapter 4:70 of the Revised Laws of Dominica.

¹⁵ Chapter 4:02 of the Revised Laws of Dominica.

“11.(1) The jurisdiction vested in the High Court in civil proceedings and in probate, divorce and matrimonial causes, shall be exercised in accordance with the provisions of this Act, of any other law in operation in the State and of the rules of court; and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered on 1st June 1984 in the High Court of Justice in England.”

Barrow JA held that section 11 which conferred upon the courts the jurisdiction to apply the law and practice administered on 1st June 1984 in the High Court in England to circumstances where no special provision was contained in the laws of Dominica could not be applied to the grant of pre-judgment interest because section 7 of the **Judgments Act** was indeed a “special provision” contained in the laws of Dominica which provided for the award of interest on judgments.¹⁶

[20] The matter appears to have been settled by the decision of the Court of Appeal in the case of **Steadroy Matthews v Garna O’Neal**.¹⁷ In that case the Court of Appeal confirmed at paragraph 70 of its judgment that **Alphonso v Ramnath** is settled law in the Virgin Islands on the issue of pre-judgment interest on damages, and that its authority was buttressed by the judgment of the court in **Andrey Adamovsky et al v Andriy Malitskiy et al**¹⁸ and the judgment of the Privy Council in **Creque v Penn**.¹⁹ In **Adamovsky v Malitskiy** the Court of Appeal had stated, per Michel JA at paragraph 13 that:

“It cannot be disputed that a party wrongfully deprived by another of money to which the first party is entitled ought to be compensated for his loss, not just by an award to him of the sum of money to which he was entitled, but so too by an award of the time value of the money from the date of its appropriation to the date on which it is ordered to be paid to him. This latter award is what is referred to as an award of pre-judgment interest.”

[21] In coming to its conclusion, the court in **Steadroy Matthews v Garna O’Neal**, per Michel JA explained at paragraphs 62 to 63 that the jurisdiction of the courts in the

¹⁶ Supra n.12 at paragraphs 64 and 65.

¹⁷ BVIHCVAP2015/0019 (delivered on 16th January 2018, unreported).

¹⁸ BVIHCMAP2014/0022 (delivered on 3rd February 2017, unreported).

¹⁹ [2007] 70 WIR 150.

Virgin Islands was set out in section 7 of the **West Indies Associated States Supreme Court (Virgin Islands) Act**.²⁰ The Act provided that “[t]he High Court shall have and exercise within the Territory all such jurisdiction (save and except the jurisdiction in Admiralty) and the same powers and authorities incidental to such jurisdiction as on the first day of January, 1940 was vested in the High Court of Justice in England.” At that date the power to award pre-judgment interest had been vested in the High Court of Justice in England by virtue of section 3 of the **Law Reform (Miscellaneous Provisions) Act, 1934**.²¹ The High Court of the Territory of the Virgin Islands had accordingly been vested with the same jurisdiction.

[22] In **The Attorney General of The Federation of St. Christopher and Nevis v SKN Choice Times Limited**²² Michel JA went on to confirm that this statement of principle represented the position of this Court on the award of pre-judgment interest not only in the British Virgin Islands but in the other member states and territories of the Eastern Caribbean Supreme Court which have legislative provisions materially identical to the above quoted in section 7(1) of the **West Indies Associated States Supreme Court (Virgin Islands) Act**.

[23] The reasoning of Michel JA in **Steadroy Matthews v Garna O’Neal, The Attorney General of The Federation of St. Christopher And Nevis v SKN Choice Times Limited** and subsequent cases is based not on the applicability of English provisions as to pre-judgment interest by virtue of section 11 of the **Eastern Caribbean Supreme Court (Dominica) Act** (which, in any case apply to procedural matters rather than to matters of substantive law,²³ rather, the jurisdiction to award pre-judgment interest is said to arise from the original jurisdiction of the Supreme Court as stated in section 7 of the various Supreme Court Acts. In the case of

²⁰ Cap. 80 of the Revised Laws of the Virgin Islands.

²¹ Chapter 41 UK General Public Acts.

²² SKBHCVP2019/0045 (delivered 27th May 2022, unreported).

²³ See *Panacom International Inc. v Sunset Investments Ltd and another* [1994] 47 WIR139; *Veda Doyle v Agnes Deane* GDAHCVAP2011/020, (delivered 16th April 2012, unreported).

Dominica, the relevant provision is section 7(1) of the **Eastern Caribbean Supreme Court (Dominica) Act** which reads:

“7. (1) The High Court shall have and exercise within the State the same jurisdiction and the same powers and authorities incidental to such jurisdiction as may be vested in the High Court of Justice of England on 2nd November 1978.”

[24] Among the powers and authorities vested in the High Court of Justice of England on 2nd November 1978 was the power to award pre-judgment interest on damages. Thus, the decision of the Court of Appeal in **Steadroy Matthews v Garna O’Neal** specifically the observations and reasoning in that case and in the case of **The Attorney General of The Federation of St. Christopher and Nevis v SKN Choice Times Limited** is applicable. The High Court in Dominica has the power to award pre-judgment interest notwithstanding the absence of specific statutory provision empowering it to do so.

[25] In the instant case there was no evidence led as to the rate of interest on short term investment in the Commonwealth of Dominica. In **Alphonso v Ramnath**, in the absence of such evidence Singh JA awarded pre-judgment interest at the rate of 5% per annum. I propose to do the same.

Disposition

[26] For the foregoing reasons given, I would order that this appeal be allowed in part. The order of the Learned Judge is varied as follows:

- (1) Interest at the rate of 2.5% per annum is awarded on the sums made payable as special damages and pre-trial loss of earnings from the date of the accident to the date of trial.
- (2) The award of \$40,000.00 made by the learned judge for general damages for pain, suffering and loss of amenities is set aside, and the amount awarded under that head of damages is increased to the sum of \$100,000.00. Interest at the rate of 5% per annum is awarded on

that sum for the period from the date of service of the claim form to the date of trial.

- (3) Save as aforesaid the appeal stands dismissed.
- (4) The respondent shall pay to the appellant: (a) prescribed costs in the court below calculated on the award as varied on appeal and (b) costs on the appeal in a sum calculated as one-half of the prescribed costs in the court below.

I concur.
Davidson Kelvin Baptiste
Justice of Appeal

I concur.
Gertel Thom
Justice of Appeal

By the Court

Chief Registrar