

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCv2022/0033

BETWEEN:

AMIR DAAWUUD

Claimant

and

1. Renaldo Seaton
2. ~~JUANN CORNELIUS~~

Defendants

CONSOLIDATED WITH:

CLAIM NO. ANUHCv2022/0034

BETWEEN:

JOEL ELLIS

Claimant

and

1. RENALDO SEATON
2. ~~JUANN CORNELIUS~~

Defendants

Appearances:

Ms. Kivinee Knight-Edwards, Counsel for the Claimants

Mr. Loy Weste, Counsel for the 1st Defendant

2023: October 12th ;
December 22nd.

DECISION

- [1] **MICHEL, M.:** The claimants, Amir Daawuud ("Mr. Daawuud") and Joel Ellis ("Mr. Ellis") sustained injuries in a motor vehicle accident on 15th July, 2020 involving the 1st defendant, Renaldo Seaton ("**Mr. Seaton**"). Mr. Ellis, who at the time was

employed as an Emergency Medical Technician (“**EMT**”) attached to the Mount St. John’s Medical Centre, was driving an ambulance in the emergency services lane leading from the Mount St. John’s Medical Centre when Mr. Seaton, driving a car owned by the 2nd defendant, Juann Cornelius (“**Mr. Cornelius**”), entered the emergency services lane to overtake a line of vehicles and collided with the ambulance being driven by Mr. Ellis. Mr. Daawuud, who was also an EMT, was an occupant in the ambulance when the accident occurred.

- [2] Mr. Daawuud and Mr. Ellis separately commenced proceedings against Mr. Seaton and Mr. Cornelius, alleging that the accident was caused by the negligent driving of Mr. Seaton who was driving the car owned by Mr. Cornelius and sought damages for the personal injuries allegedly suffered. The claims were subsequently consolidated by order of the Court and the Parties attended mediation. Following mediation, the Claimants agreed to withdraw the Claimant against Mr. Cornelius and Mr. Seaton agreed to accept liability for causing the accident. The Parties did not reach an agreement on quantum and the consolidated claims therefore came on for the Court’s assessment of damages.
- [3] In his claim filed on 10th February, 2022 Mr. Daawuud sought special damages in the sum of \$6,480.00, general damages to be assessed, costs and interest. In Mr. Ellis’ claim filed on even date, he sought special damages in the sum of \$18,568.69, general damages to be assessed, costs and interest.
- [4] Mr. Daawuud and Mr. Ellis each filed witness statements in support of the assessment. Additionally, a witness statement was filed by Jameel Jacobs in support of Mr. Ellis’ assessment of damages. Dr. K.K. Singh was admitted by the Court as an expert in these proceedings and filed two expert medical reports, one in respect of injuries sustained by Mr. Daawuud and the other in respect of the injuries sustained by Mr. Ellis. A witness summary was filed on behalf of Mr. Seaton. The Parties also filed written submissions together with authorities for the conduct of the assessment.
- [5] I will first consider Mr. Daawuud’s Claim for Damages.

Mr. Daawuud’s Claim

General Damages

- [6] It is recognized in our jurisdiction that in approaching an award for general damages, the practice is to “grant a global sum for general damages for pain and suffering and loss of amenities, considering these against the background of the nature and extent of the injuries sustained and the nature and gravity of

the resulting impairment and physical disability.”¹ The purpose of an award is to put a claimant in the position that they would have been if the accident had not occurred. The Court must award a fair and reasonable sum to compensate the Claimant for the injuries suffered.

- [7] 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.²

Nature and Extent of Injuries Suffered

- [8] Mr. Daawuud was 24 years old at the time of the accident. In his witness statement he stated that he sustained personal injuries in the accident and was seen at the emergency room of the Mount St. John’s Medical Centre. He further stated that he was sent home with medication and was given sick leave.
- [9] Some three months after the accident, Mr. Daawuud was examined by Dr. K.K. Singh. In his expert medical report filed on 25th May, 2023 Dr. Singh stated that after physically examining Mr. Daawuud’s skeleton muscular system confined to his lumbo sacral spine, Mr. Daawuud showed classical signs to conclude the diagnosis of prolapse lumbo intervertebral disc. He stated that findings of an x-ray of Mr. Daawuud’s lumbo sacral spin revealed obliteration of lumbo lordosis with lumbarization of sacral first vertebrae. Dr. Singh further stated that it was recommended at the time that Mr. Daawuud have a MR scan done of his lumbo sacral spine to radiologically confirm the clinical diagnosis. He stated that Mr. Daawuud undertook an MR study on 7th December, 2020 which confirmed his clinical diagnosis, a degeneration at the level of L5/S1.

The Nature and Gravity of the resulting Physical Disability

- [10] Dr. Singh in his report stated that Mr. Daawuud was diagnosed as being disabled in the full functions of his lumbo sacral spine. He stated that his clinical assessment and relying on the guidelines to the Evaluation of Permanent Impairment, he was able to determine that Mr. Daawuud is 7% permanently disabled as a whole person, however, considering his young age, his lifestyle, his symptomatic traumatic injury of his lumbo sacral spin, and his decreased sensation on the right 5th dermatome, it is likely that Mr. Daawuud will need surgery in the future for decompression of his neural component. Further,

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

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

looking at Mr. Daawuud's entire clinical picture, he expected that Mr. Daawuud's permanent disability will increase as he grows older on account of post-traumatic degenerative joint disease.

The Pain and Suffering Endured and Loss of Amenities Suffered

- [11] In his witness statement, Mr. Daawuud described the pain, suffering and loss of amenities he suffered because of the accident.

Pain and Suffering Endured

- [12] Mr. Daawuud stated that even up to now, with the limited activity that he undertakes, he is constantly in pain and that there is a radiating pain on the right side of his back which transitions or shoots over to the left side of his back and from the left side of his back it shoots down his left leg. He stated that the pain is even more severe when having to perform Cardio Pulmonary Resuscitation (CPR).
- [13] Mr. Daawuud stated that he is unable to sit for long periods because of the pain he experiences when doing so and that when he stands for long periods, he can feel the pressure or strain on his back. He stated that he never had back pains before the accident and that his injury has affected the way he functions at work as he is not able to bend over, especially in the ambulance van. He stated that he usually has to sit and try to tend to patients and that he struggles to lift or assist patients as this usually causes strain to his back resulting in pain.

Loss of Amenities Suffered

- [14] Mr. Daawuud stated that he was temporarily disabled in the full function of his lumbo sacral spin from the date of the injury up until 23rd December, 2020. During that time, he stated he was unable to care for himself in certain areas and had to rely on his family to assist with the lifting of objects around the house. He stated that he was unable to lift buckets of water for his bath and had to receive assistance.
- [15] Mr. Daawuud also explained that he was an avid hiker and used to go on hikes every other weekend and was a fit person in terms of exercise and used to go walking/running on evenings but is unable to now.

The Extent to which Pecuniary Prospects have been Affected

- [16] Mr. Daawuud is still employed as an EMT and there does not appear to be an effect on his pecuniary prospects.
- [17] I found Mr. Daawuud's evidence to be credible and his evidence in relation to his injuries and the resulting effects is accepted.

Award for General Damages

- [18] In making an award for general damages, the Court must strive for consistency by using comparative cases tailored to the specific facts of the individual case. In **CCCA Limited v Julius Jeffrey**,³ Gordon JA [Ag.] framed this as follows:

“I accept that the trial judge must exercise his discretion based on the evidence before him, but that discretion must be curtailed by attempting to achieve consistency in awards within the jurisdiction of this Court.”

- [19] Lord Hope of Craighead in **Wells v Wells**⁴ explained the approach in the following terms: “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 awards in comparable cases as represents the Court's basic estimate of the [claimant's] damage”.
- [20] Counsel for Mr. Daawuud invited the Court to make an award of \$60,000.00 in general damages for pain, suffering and loss of amenities and submitted three cases⁵ from the Eastern Caribbean for the Court's consideration of an appropriate comparable award:

- (1) **Mercedes Delplesche v Samuel Emmanuel De Roche**:⁶ The claimant, who was 54 years old at the time, was struck down by a vehicle owned and driven by the defendant. Her injuries from the accident included trauma to the head and left knee; abrasion to face; laceration to forehead, nose and lower lip and bleeding from left nostril.

³ Saint Vincent and the Grenadines Civil Appeal No. 10 of 2003 (delivered 2nd March 2004, unreported).

⁴ [1998] 3 All ER 481.

⁵ Kendol Fredericks v Carlton Cunningham SVGHCV2022/0475 (delivered; Maynard v Jeffers NEVHCV2004/0131; Joseph v Morris Civil Suit No. 166 of 2005; Rasamin Rogers v Tyrone Creese Kismet Inc. SVGHCV2017/0065; Fraser v Dalrimple et al ANUHCV2004/0513; Darel Christopher v Benedicta Samuels dba Samuels Richardson & Co. BVIHCV2008/0183; Willie et al v Chervy Oliviere et al SLUHCV2016/0622; Mark Andrew Carter v St. Clair Latham et al SVGHCV2005/0524; CCAv Jeffrey Civil Appeal No. 10 of 2003; Ezra Neverson v Seafarers Shipyard Group Ltd. SVGHCV2018/0194; Sylvian Laurent v Simon Anthony Cuffy DOMHCV2012/0238

⁶ St. Vincent and the Grenadines Claim No. 41 of 2012 (delivered 19th April 2013, unreported).

The witness complained that she suffered from severe pains in her lower back, head and knee which made it difficult for her to walk. She stated was unable to continue her work as a home assistant because of the pain she was suffering from; however, no updated medical report was provided to support this contention. The claimant also indicated that because of the pain she was experiencing, her social life was affected. After considering cases from the OECS the learned master awarded the claimant the sum of \$65,000.00 in general damages for pain, suffering and loss of amenities.

(2) **Celia Hatchett v First Caribbean International Bank:**⁷ The claimant was 42 years old at the time when she sustained injuries from an accident. She suffered back injuries comprising central disc herniation of her lumbar L5/S1 vertebrae with degenerative disc disease at L4/L5 disc level. The medical evidence in that case was that the injury would deteriorate as a result of age resulting in radicular symptoms, stiffness, muscle, motor and sensory loss which would required continued treatment of possibly surgery. The claimant's evidence was that she was suffering from severe pain and restrictions in normal activities like bending which was affecting her ability to do the usual physical activities performed by a person of her age. She was awarded US\$20,000.00 for pain suffering and loss of amenities. A strict conversion from US to East Caribbean Dollars⁸ would give an award of \$54,338.00.

(3) **Nigel Mason v Maundays Bay Management Ltd. (Trading as Cap Juluca Hotel):**⁹ during the course of his employment with the defendant, the claimant who was 37 years old at the time, fell and sustained personal injuries. The injuries suffered by the claimant as a result of the accident were a disc herniation of or at L5/S1, which is a slip disc in the lower back region which produced sciatica, a pain affecting the back, hip and outer side of the leg caused by compression of a spinal nerve root in the lower back. The symptoms of the claimant's injuries had worsened over time. He was awarded \$50,000.00 for pain and suffering and \$30,000.00 for loss of amenities.

[21] Learned Counsel for Mr. Seaton did not cross examine Mr. Daawuud and did not challenge the expert evidence. Learned Counsel for Mr. Seaton submitted that Mr. Daawuud should be awarded the sum of \$50,000.00 for pain, suffering and loss of amenities. In reliance on this submission, in addition to the case of **Nigel Mason v Maundays Bay Management Ltd.**, which was also submitted by Counsel for Mr. Daawuud and referred to above, learned counsel for Mr.

⁷ BVIHCV2006/0277.

⁸ \$US to \$EC conversion rate of 2.7169.

⁹ AXAHCV2006/0090 (delivered 23rd June 2009, unreported).

Seaton submitted three further cases from the Eastern Caribbean for the Court's consideration:

- (1) **Anita Tobitt v Grand Royal Antigua Beach Resort et al**:¹⁰ The claimant was a passenger on a bus driven by the ancillary defendant who was hired by the defendant when the bus struck an object and caused it to bounce and skid off the road causing injuries to the claimant's back and neck. The claimant was diagnosed with lumbar inter-vertebral disc/lumbo-sacral dis with diminished sensation in the dermatome distribution of L5-S1 and following an MRI it was determined that the radiological findings were consistent with central and left lateral disc herniation at L5/S1 with impingement of the thecal sac. Her final medical report concluded that she was 8% permanently disabled as a further increase in her permanent physical impairments and that she may have required surgery in the future to maintain her current level of abilities. She continued to experience severe pain, found it difficult to sit in an upright position for any extended period of time and was unable to perform everyday functions and her relationship broke down as she was unable to participate in sexual activity. She was awarded the sum of \$50,000.00 in general damages for pain, suffering and loss of amenities.
- (2) **Rashid Pigott v Galeforce Windows & Doors Inc**: The claimant was 42 years old and suffered personal injuries because of the accident caused by the defendant. His injuries included posterior osteophytes at C4/5, C5/6, and C6/7 which contained diffuse disc herniations at those level. He was assessed as having a partial disability of 40% which would be lessened by surgical team to about 15%. The learned master awarded the claimant general damages of \$50,000.00 for pain suffering and loss of amenities.

[22] The cases referred to by the Counsel for Mr. Daawuud and Mr. Seaton have been helpful for the Court's consideration. I accept the expert evidence of Dr. Singh. The injuries received by Mr. Daawuud are comparable to the cases submitted. I have found the case of **Anita Tobitt v Grand Royal Antigua Beach Resort et al** to be particularly helpful. The claimant in **Anita Tobitt** suffered 8% disability whilst Mr. Daawuud has been assessed at 7% permanent disability. The injuries received by the claimants in both cases were comparable and as well as their prognosis. Having had regard to all the considerations for assessing an award for general damages for pain suffering and loss of amenities and considering the cases submitted, I am of the view that an award of

¹⁰ ANUHCv2006/0026 (delivered 13th October 2010, unreported).

\$55,000.00 in general damages for pain suffering and loss of amenities is adequate compensation for Mr. Daawuud.

Loss of Earning Capacity

- [23] Learned Counsel for Mr. Daawuud submitted in her written submissions that the Court should make an award to Mr. Daawuud for loss of earning capacity. I see no basis upon which this award should be made. Mr. Daawuud is still employed in the position he was in before the accident and there is no evidence before the court that Mr. Daawuud is unable to continue in his present duties or other duties for which he is qualified, even in the face of his assessed permanent disability occasioned by the injuries he received. Mr. Daawuud appears to be carrying on with his duties and there is no evidence of him being thrown into the job market. I am not satisfied the evidence placed before the Court demonstrates that Mr. Daawuud's partial disability resulting from the injury he sustained in the accident puts him at a disadvantage in the labour market.

Future Medical Expenses

- [24] In her written submissions in support of the assessment of damages in respect of Mr. Daawuud, learned counsel for Mr. Daawuud submitted that the Court should make an award of damages for future medical expenses as follows:
- (1) Future surgery: Between \$65,000 and \$85,000.00;
 - (2) Future physical therapy: \$692,640.00;
 - (3) Orthopaedic consultation and neurological monitoring: \$66,600.00.
- [25] As I have previously stated, Mr. Daawuud was assessed as 7% permanent disabled as a whole person. Dr. Singh stated in his expert medical report that considering Mr. Daawuud's young age, his lifestyle, his symptomatic traumatic injury of his lumbo sacral spine, and his decreased sensation on the right 5th dermatome, it was likely that Mr. Daawuud would need surgery in the future for decompression of his neural component. Dr. Singh also stated that it was likely that Mr. Daawuud's permanent disability will increase as he grows older on account of post-traumatic degenerative joint disease.
- [26] Dr. Singh was therefore of the opinion that Mr. Daawuud will require surgery, spinal decompression or lumbo sacral fusion to prevent future permanent disabilities to his cervical and lumbo sacral spine. Dr. Singh stated that the average cost for spinal surgery in the region is EC\$65,000.00 to EC\$85,000.00. This was an estimation by Dr. Singh and no other material in relation to the possible cost of surgery was provided. Dr. Singh further stated that Mr. Daawuud would require orthopaedic consultation and neurological monitoring

at least six times a year or more if symptomatic which would cost approximately \$300.00 a visit. He also opined that Mr. Daawuud would need clinically supervised physical therapy at least three times per week for the rest of his life and estimated the average cost of therapy at EC\$125.00 per session.

- [27] In **Seepersad v. Persad & Anor (Trinidad and Tobago)**¹¹, the Judicial Committee of the Privy Council stated the following in relation to the costs of future medical treatment and medication, stated:

“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: of such cases as **Smith v Manchester Corporation** (1974) 17 KIR 1 and **Moeliker v Reyrolle & Co Ltd** [1976] ICR 253.”

- [28] The special damages claimed by Mr. Daawuud relate to the expenses he incurred for medical consultation, x-ray and MRI scan. It is noteworthy that Mr. Daawuud has made no claim for the cost of physiotherapy after the accident and in fact there is no evidence at all of Mr. Daawuud having undergone any physiotherapy leading up to the assessment of damages. The medical evidence of Dr. Singh about the possibility of Mr. Daawuud requiring surgery in the future while not unequivocal, strongly pointed to its likelihood so as to prevent future permanent disabilities to his cervical and lumbo sacral spine.
- [29] In his written submissions, learned counsel for Mr. Seaton accepted that Mr. Daawuud should be compensated for the cost of future surgery, but submitted that such sum should be reduced given the vicissitudes of life. Using a multiplier-multiplicand approach, involving a “guesstimate” of the appropriate multiplicand, learned counsel for Mr. Seaton suggested a total award for the cost of physiotherapy and neurological and orthopedic consultation of \$38,250.00.
- [30] The court is guided by the pronouncements of the Board in **Seepersad v Persad**. It would be impossible to make an accurate and verifiable estimate of the future cost of medical in respect of Mr. Daawuud, the best that the Court can

¹¹ [2004] UKPC 19.

do is to award a figure that will adequately cover the possibility of Mr. Daawuud incurring future related medical expenses. Considering Mr. Daawuud's medical expenses thus far and the items claimed, the unchallenged estimates that have been provided by Dr. Singh in his medical reports, I would make an award of EC\$75,000.00 to Mr. Daawuud to compensate his future medical expenses including surgery (if becomes necessary)), physiotherapy and orthopedic and neurological monitoring.

Special Damages

[31] It is well established so as to be considered trite that special damages must be strictly pleaded, particularised and proved. **Mc Gregor on Damages**¹² 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.”

[32] Mr. Daawuud as pleaded five items of special damage totaling \$6,480.00 relating to medical reports:

a. Invoice	Ortho Medical	08/10/20	\$1,8000.00
b. Receipt #526664	Ortho Medical	08/10/20	\$600.00
c. Invoice	Ortho Medical	22/12/20	\$2,000.00
d. Receipt #421104		22/12/20	\$200.00
e. Receipt #14285	Belmont	07/12/20	\$1880.00

[33] I am satisfied that Mr. Daawuud has sufficiently pleaded, particularized and proved the expenses he seeks to recover by providing the requisite receipts. I would therefore award him the special damages in the sum of \$6,480.00.

[34] Mr. Daawuud sought by way of a supplemental witness statement to recover a further sum for a medical report in the amount of \$1,080.00. This item of special damage was not pleaded. Mr. Daawuud would have had to amend his statement of claim to plead this item of special damage so as to entitle him to recover the sum. Having failed to do so, he is not entitled to recover this sum as special damage.¹³

[35] I will now turn to Mr. Joel Ellis' claim for damages

¹² 18th Edition at 44-012.

¹³ See *Carl Webster v Historic Beacon Point Anguilla Ltd et al* (delivered 21st June 2023, re-issued 19th September 2023, unreported).

Mr. Joel Ellis' Claim

General Damages

Nature and Extent of Injuries Suffered

- [36] Mr. Ellis' injuries can be gleaned from his witness statement and the expert report of Dr. Singh filed on 25th May, 2023. Following the accident on 5th October, 2020 Mr. Ellis was taken to the Mount St. John's Medical Centre to receive treatment for the injuries he received in the accident. He was treated, evaluated and detained overnight for observation and further treatment. Dr. Singh indicated that Mr. Ellis was seen by him on 5th October, 2020 some three months after the accident. He complained of pain in his lower back and neck and pain in his right thumb.
- [37] Following an examination of Mr. Ellis skeleton muscular system confined to his lumbar spine and his right hand, Dr. Singh indicated in his report that it was revealed that there was (1) prolapse of intervertebral disc in thoraco lumbar spine with diminished sensation in the dermatome distribution of L5/S1 and (2) capsular injury of right 1st metacarpophalangeal joint and long flexor pollicis longus tendon of right thumb. Radiological studies conducted on Mr. Ellis revealed multiple disc bulges in his lumbo sacral spine as per a CT scan.

The Nature and Gravity of the resulting Physical Disability

- [38] Dr. Singh stated that Mr. Ellis recovered well from the disabilities of his right-hand injury because of synovial injection; however, he evaluated his permanent disability as 8% as a whole man for the rest of this life on account of the accident and which he stated may increase as he gets older. Dr. Singh examined Mr. Ellis again on 13th July, 2022 when he was complaining of pain in his lower back radiating on the left lower extremity with diminished sensation on the left side of the foot. When he was examined, when in straight left leaning position at 45 degrees, he had diminished sensation in the dermatome distribution of L5.

The Pain and Suffering Endured and Loss of Amenities Suffered

- [39] The pain, suffering and loss of amenities suffered by the claimant were detailed in his witness statement filed on 28th April, 2023. Mr. Ellis detailed how during the time after the accident he was unable to care for himself and do the things around the house he was accustomed to. He had difficulty breathing and moving around and found it challenging to lift certain objects and to bathe himself. He slept on the floor due to pain he was experiencing in his back and was unable to do yardwork. He stopped cycling, but later resumed with the use of painkillers.

He also indicated that he was unable to sit down for more than 45 minutes to an hour. He noted that he never had back pains prior to the accident.

- [40] Mr. Ellis stated that currently, he is still experiencing pain and stiffness in his lower back which is being managed with medication and mild physiotherapy. He stated that he experienced a limitation when he had to move his left leg and often experiences pain and numbness in his left leg which intensifies at night. As a result, he is has to take mild sleep aids to get some basic sleep. He stated that he is unable to sit down for more than 45 minutes to an hour because of his back pain, and that he never had any back pains prior to the accident.

Loss of Amenities Suffered

- [41] In his witness statement, Mr. Daawuud detailed how his social life and personal life were affected and his ability to perform his duties at work. He also stated that the sleep aids he has had to take to relieve his pain at night to get some basic sleep has affected his private because one of the side effects of the medication on him is a reduced desire to be intimate

The Extent to which Pecuniary Prospects have been Affected

- [42] In relation to his work, Mr. Ellis stated that his back injury affected the way he functioned and operated at work as he was unable to bend over or sit for long periods especially when driving the ambulance van. He stated that he struggled to lift patients as it caused a strain on his back. It was recommended that he retire on medical grounds as he was unable to perform his duties as an ambulance driver effectively. He stated that he was also deemed to drive buggy cars which he had operated for another business venture he helped run. This aspect of Mr. Daawuud's case will be considered later in determining any award for loss of earnings.
- [43] I also found the evidence of Mr. Ellis to be credible. He was not cross-examined by Counsel for Mr. Seaton. I would accept his evidence as it relates to his injuries and the resulting effects.

Award for General Damages

- [44] Learned Counsel for Mr. Ellis submitted that the court should make an award of general damages to Mr. Ellis of \$85,000.00 for pain, suffering and loss of amenities. She submitted three cases for the court's consideration of a compatible award. Counsel relies on the case of **Anita Tobitt v Grand Royal Antiquan Beach Resort et al** which I have already discussed, **Michael**

DeCastro v Antigua Masonry Products Limited,¹⁴ and **Sparman v Jolly Beach Resort Spa**.¹⁵

- [45] The Claimant in **Michael De Castro v Antigua Masonry Products Limited** was injured during his employment at the Defendant's block making plant. The Claimant sustained the following injuries: severe amount of gas in the epigastric region; disc desiccation; substance degeneration; disc herniation L4/L5 and L5/LS1; mass effect on cauda; compromise of lateral recesses; and never root contracts. He was assessed as having permanent partial disability of 25%. He was awarded the sum of \$100,000.00 for pain, suffering and loss of amenities and diminution of his pecuniary prospects.
- [46] The Claimant in **Sparman v Jolly Beach Resort and Spa** was employed as a cook at the defendant's hotel when she slipped and fell on a wet floor. Her injuries included pain in her back and right hip and lower limb, pain in her spine, sprain at L4-L5 disc bulge, pins and needles sensations and mild discal dehydration with mild annular bulge of L4-L5. It was recommended that she have surgery and she could no longer work as a cook. She was awarded \$65,000.00 for pain, suffering and loss of amenities.
- [47] Learned Counsel for Mr. Seaton invited the court to consider the same three cases it submitted in relation to an award to Mr. Daawuud: **Nigel Mason v Maundays Bay Management Ltd**, **Anita Tobitt v Grand Royal Antiguan Beach Resort et al**; and **Rashid Pigott v Galeforce Windows & Doors Inc.** I have considered all the cases and found them to be helpful. It is noteworthy that both Parties have relied on the case of **Anita Tobitt**. The injuries sustained by Mr. Ellis are comparable to the Claimant in **Anita Tobitt** and both were assessed as being 8% permanently disabled as whole person. I do however consider that the medical evidence seems to indicate that Mr. Ellis' back injury was more sever and he also suffered an injury to his right hand.
- [48] Learned Counsel for Mr. Ellis pointed out however that the **Anita Tobitt** case is of some vintage, the award of general damages for pain, suffering and loss of amenities in the sum of \$50,000.00 having been made in 2010. Counsel for Mr. Ellis also submitted that the loss of amenities experienced by Mr. Ellis is greater than the Claimant in **Anita Tobitt**. I however do not consider that there is much distinction in the loss of amenities suffered by Mr. Ellis and the Claimant in **Anita Tobitt**.
- [49] Considering Mr. Ellis' injuries, the fact that he has been assessed as being 8% permanent disabled as a whole man, the pain, suffering and loss of amenities

¹⁴ ANUHCv2010/0456.

¹⁵ ANUHCv2012/0292.

he suffered, and the vintage of the cases referred to the Court, I consider that an award of \$70,000.00 to Mr. Ellis for general damages for pain, suffering and loss of amenities to be fair compensation.

Loss of Future Earnings

- [50] Mr. Ellis' evidence is that because of the injuries he sustained in the accident with Mr. Seaton, he had to retire. In his witness statement he stated that his back injury ultimately affected the way he functioned and operated at work in terms of not being able to bend over or sit for long periods especially when driving the ambulance van. He stated that he struggled to lift or assist patients as it usually caused strain in his back resulting in back pain. He said he would often try to push through whilst at work, but his pain became worst and it was recommended that he retire on medical grounds on account of the occupational injury. He stated that he eventually had to retire from the job as he was deemed no longer fit or able to perform his EMT duties as those duties such as lifting stretchers, assisting patients, being in a seated position and driving to the scene of accidents and transporting patients to the hospital would continue to aggravate and exaggerate the pain he was experiencing. He stated further that having to perform those duties whilst medicated were taxing on the body and that as a result of all of the above, it was no longer fit for him to continue to work as an EMT.
- [51] Mr. Ellis stated that his injuries also prevented him from driving buggies which he did for his business and he was deemed no longer fit to drive the buggies due to the rough terrain of off-roading and the strain it would cause on his back.
- [52] Mr. Ellis' contentions are supported by the expert report of Dr. Singh. In his report, Dr. Singh stated that Mr. Ellis continued to work as an EMT driver observing as best he could his instructions and medical advice, but it did not work out and he was deemed as unfit to function as full EMT technician and was advised to retire on medical grounds on account of occupational injury sustained whilst on the job. He further stated that the accident and injuries suffered by Mr. Ellis affected the work he conducted as a buggy driver and he was therefore declared unfit to function in that position.
- [53] Mr. Ellis stated that as an EMT driver, he earned a net income of approximately EC\$2,700.00 per month and had to walk away from the job for which he trained and which was his passion. He stated that he never anticipated having to leave his job before the end of his working life. Mr. Ellis did not provide any evidence in relation to loss of future income driving buggies for his business.

- [54] Learned Counsel for Mr. Ellis invited the court to make an award to Mr. Ellis of \$324,000.00 for loss of earning capacity. Learned Counsel submitted that the court should arrive at this figure by using an annual salary for Mr. Ellis EC\$32,000.00 and adopting a multiplier of 10 years.
- [55] Learned Counsel for the Defendant submitted that a claim for loss of earning capacity has not been made out or not sufficiently made out by Mr. Elis.
- [56] I believe that the award being suggested by learned Counsel for Mr. Ellis ought properly to be referred to as loss of future earnings. It does not appear that Mr. Ellis is currently working since retiring as an EMT. In **Terrance Amedee v Marcus Modeste**, Michel JA explained the head of damages of loss of earnings as follows:
- “Loss of future earnings is the loss occasioned to an injured party consequent on his inability to work as a result of the injuries which he sustained or the diminution in his income consequent on his diminished capacity to work as a result of his injuries. To qualify for this award, the injured party must satisfy the court by medical or other cogent evidence that he was rendered incapable of working or his ability to work was impaired to the extent that the income which he earned from his employment was lessened as a result of his injuries.”
- [57] Loss of earning capacity on the other hand refers to a situation where an injured party is in regular employment but is rendered handicapped on the labour market due to their injuries because the injured person may lose his employment and not be able to get another similar remunerated job.¹⁶
- [58] There was no evidence before the Court that Mr. Ellis was employed at the date of the assessment. The evidence was that he was medically retired as an EMT due to the injuries he received. In the circumstances, I am of the view that Mr. Ellis would be entitled to an award for loss of future earnings.
- [59] I am of the view that there is sufficient evidence before the Court to make an award for Mr. Ellis’ loss of future earnings by using the multiplier-multiplicand method. In adopting this method, I am guided by the principles stated in the cases of **Steadroy Matthews v Garna O’Neal** and **Alphonso v Ramnath**.¹⁷
- [60] In arriving at an appropriate multiplier, I note that at the date of the assessment Mr. Ellis was 45 years 5 months and 20 days old having been born on 22nd April, 1978. I accept that he would have a normal working life like to the retirement age of

¹⁶ See: *Steadroy Matthews v Garna O’Neal* BVIHCVAP2015/0016 (delivered 16th January 2018, unreported).

¹⁷ (1997) 56 WIR 183.

65 years. This would result in the starting point of 19.5 years working life. This multiplier must be reduced to account for its lump sum nature of the award and also the vicissitudes of life. The figure to my mind must also be further reduced because I am of the view that the evidence before the court shows that Mr. Ellis was unable to perform the duties of his former job as an EMT and had to retire from the job prematurely, but there is no evidence to suggest that Mr. Ellis cannot find other employment during his working life. A similar approach was taken by the Court in **Steadroy Matthews v Garna O'Neal**.¹⁸ Mr. Ellis' own evidence is that he will have to look or consider working in another area or field and will have to receive training, but that he definitely cannot return to a similar field such as EMT. In the circumstances, I am of the view that the multiplier should be reduced by 60% to reflect the aforementioned considerations. I will therefore adopt a multiplier of 7.8.

[61] In terms of the appropriate multiplicand, Mr. Ellis' evidence is that his net salary as an EMT was \$2,700.00 per month. Although Mr. Ellis has not provided a pay slip or other documentary evidence in support of his net salary, there has been no challenge by Mr. Seaton to this figure and in the circumstances, I accept the figure of \$2,700.00 as Mr. Ellis' net monthly salary. Learned Counsel for the Claimant suggested an annual salary of \$32,000.00 and I consider this to be appropriate in the circumstances.

[62] Applying a multiplier of 7.8 to a multiplicand of \$32,000.00, I would quantify Mr. Ellis' loss of earnings as \$249,600.00.

Future Medical Expenses

[63] Dr. Singh stated that in considering Mr. Ellis' overall clinical picture, his age and long-life span with multiple disc bulges, contusion to his lumbar vertebrae confirmed in radiological studies with continuing symptoms and on and off diminished sensation in the left 5th dermatome, it was likely that Mr. Ellis will need spinal decompression surgery. Additionally, looking at his entire clinical picture, it is expected that Mr. Ellis' permanent disability which has presently been assessed as 8% permanent disability as a whole person will increase as he grows older Mr. Ellis in respect of future surgery and relied on the cases of **Peter Roberts v Damien Benjamin**,¹⁹. I disagree. I note that in the case relied on by counsel for Mr. Seaton, the evidence on the need for future surgery was inconclusive bordering on the surgery being unnecessary. In this case, there is clear evidence from Dr. Singh that Mr. Ellis will need spinal decompression surgery given his overall clinical picture. Although Mr. Ellis did not expressly

¹⁸ See also the decision of Drysdale J in *Dominique Warner v Jumby Bay Island Company Limited* ANUHCv2019/0771 (delivered 12th December 2023, unreported).

¹⁹ ANUHCv2019/0072 (delivered 11th February 2020, unreported).

state in his witness statement that he will get the surgery, he has acknowledged the need for the surgery based on the recommendation of Dr. Singh.

- [64] The Board in **Seepersad** made it clear that it would often not be possible for form an accurate verifiable estimate of the future cost of medical treatment because much depends on the progress of an injured party. The party may improve or they made get worst. Accordingly, it is not guaranteed that Mr. Ellis will have to undergo surgery in the future but the evidence points to it being likely. Thus the Court must make an award to reflect the likelihood of having to incur that expense in the future.
- [65] Based on the medical evidence presented to the Court, I accept that there is a strong likelihood that Mr. Ellis will require spinal decompression surgery in the future to present further increase in his permanent disability. Dr. Singh has estimated the cost of this surgery in the Caribbean at between EC\$60,000.00 and EC\$85,000.00.
- [66] As with Mr. Daawuud's claim for future medical expenses, the Court is again guided by the Board in **Seepersad v Persad**. An award should be made to reflect the possibility of incurring medical expenses in the future on account of Mr. Ellis' present injuries. Mr. Ellis has also sought to recover sums for future medical related expenses, orthopaedic consultation, and neurological monitoring. Although learned Counsel for Mr. Seaton submitted that no award should be made for future surgery, he submitted that the total award for the cost of physiotherapy and orthopaedic consultation for the rest of his life should be EC\$19,296.00, this figuring involving some "guesstimating" at an appropriate multiplier. I do not consider a multiplier/multiplicand approach is appropriate especially given the "guesstimating" that would be involved. I will instead make a global award based on the approach of the Board in **Seepersad**.
- [67] Having considered Mr. Ellis' medical evidence and the unchallenged opinion of Dr. Singh, I am of the view that an award of \$60,000.00 is reasonable to cover the possibility of Mr. Ellis incurring future medical expenses.

Special Damages

- [68] In his statement of claim, Mr. Ellis claimed special damages as follows:

Invoice #526657 (Medical Report - Ortho Medical) 7/10/2020	\$1,000.00
Invoice #8916 (Professional Services -Ortho Medical 04/11/2020	\$2,680.00
Receipt #000001 Ortho Medical 7/12/2020	\$430.00
Receipt #14058 (MRI - Belmont Clinic 30/10/2020	\$3,760.00
Invoice #76429 Police Report 15/10/2020	\$200.00

Invoice #927193 (MSJMC) 15/07/2020	\$2,888.69
Receipt #316351 (Medical Legal Report MSJMC) 10/06/2021	\$150.00
Receipt #526651 (Consultation) 5/10/2020	\$250.00
Total:	\$11,358.69

Loss of wages #843 17/07/2020	US\$2,740.00
Loss of wages #543 16/07/2020	US\$2384.00
Loss of wages #853 17/07/2020	US\$2086.00
Total:	US\$7,210.00/EC\$19,588.50

[69] In relation to Mr. Ellis claim for special damages for medical expenses and reports, I am satisfied that he has pleaded and proved these items totaling \$11,358.69. In his witness statement and written submissions, Mr. Ellis has sought to recover further sums of \$1,080.00 and \$830.00 for medical reports. These items were not pleaded by Mr. Ellis in his statement of claim and he is not entitled to recover them as special damages.²⁰

[70] As it relates to his claim for loss of wages these represented loss of income from Mr. Ellis' buggy tours which were cancelled following the accident. I am satisfied that these items have been sufficiently pleaded and proved these losses based on the invoices submitted with the claim and the evidence of Mr. Ellis and his witness Jameel Jacobs. I would therefore award the Claimant the sum of US\$7,210.00 or \$19,588.50 for loss of income.

Interest

[71] In calculating interest on the sums found payable to the Claimants, I am guided by the principles espoused by Michel JA in **Terrance Amedee v Marcus Modeste**. Interest on general damages shall be calculated at the rate 5% per annum from the date of service of the claims on the 1st Defendant to the date of this order. Interest on special damages shall be calculated at the rate of 2.5% per annum from the date the loss was incurred to the date of this order. Post judgment interest shall be at the statutory rate of 5% per annum.

Disposition

Mr. Daawuud's Claim

[72] In light of the foregoing, Mr. Seaton shall pay Mr. Daawuud the following sums:

²⁰ See: Carl Webster v Historic Beacon Point Anguilla Ltd. et al AXAHCV2020/0020 (delivered 21st June 2023; Re-issued 19th September 2023, unreported) at para. 22.

1. General damages for pain, suffering and loss of amenities in sum of EC\$55,000.00 together with interest at the rate of 5% per annum from the date of service of the claim to the date of this order.
2. Special damages in the sum of EC\$6,480.00 together with interest at the rate of 2.5 % from the date of the loss to the date of this order.
3. The sum of \$75,000.00 for future medical care. No interest is awarded before judgment.
4. Post judgment interest on the global award at the statutory rate of 5% per annum until payment in full.
5. 55% of prescribed costs in accordance with rule 65.5 and Appendix B and C to Part 65 of the **Civil Procedure Rules 2000**.

Mr. Ellis' Claim

[73] In light of the foregoing, Mr. Seaton shall pay Mr. Ellis the following:

1. General damages for pain, suffering and loss of amenities in sum of EC\$65,000.00 together with interest at the rate of 5% per annum from the date of service of the claim to the date of this order.
2. Special damages in the sum of \$11,358.69 together with interest at the rate of 2.5 % from the date of the loss to the date of this order.
3. Past loss of earnings in the sum of EC\$19,588.50 together with interest at the rate of 2.5% per annum from the date of loss to the date of this order.
4. Loss of future earnings in the sum of \$249,600.00. No interest is awarded before judgment.
5. The sum of \$60,000.00 for future medical care. No interest is awarded before judgment.
6. Post judgment interest on the global award at the statutory rate of 5% per annum until payment in full.
7. 55% of prescribed costs in accordance with rule 65.5 and Appendix B and C to Part 65 of the **Civil Procedure Rules 2000**.

[74] I wish to thank learned counsel for their helpful submissions.

Carlos Cameron Michel
High Court Master

By the Court

Registrar