

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM No: BVIHCV 2021/0328

BETWEEN:

ANYELINA MEJIA VILLA

Claimant

and

ELMO CONNER JR

Defendant

Appearances:

Ms. Nellien P Bute of Maximea & Co Law Chambers for the Claimant
The Defendant did not appear and was not represented

2022 October 25
October 31

JUDGMENT (corrected under the slip rule)

[1] **JACK, J [Ag.]:** On 17th December 2019, the claimant, Ms. Mejia, returned home from work. She was attacked by four pit-bull terriers owned by the defendant, Mr. Conner. On 9th December 2021 she issued proceedings for personal injuries sustained in the attack. The defendant, after service of the proceedings, failed to enter an appearance. On 22nd January 2022 judgment by default was entered with damages to be assessed. It is those damages which I am now assessing.

The heads of damage claimed

[2] Ms. Mejia seeks:

(a) General damages for pain suffering and loss of amenity;

- (b) A sum in respect of the gratuitous care given her by her aunt and her then fiancé;
- (c) Special damages to date; and
- (d) The ongoing cost of Pregabal-M, a drug prescribed for neuropathic pain which she will have to take for the rest of her life.

It is convenient to deal with these heads in reverse order. I will first summarise my findings of fact and holdings of law, before setting out my detailed reasoning.

Summary

- [3] (d) In assessing the claim for the future cost of pain-killers, I applied a discount rate of 0.5 per cent. This reflected the rate of return on United States Treasury Inflation-Protected Securities or TIPS. The American figures for TIPS are more appropriate than those for UK index linked gilts. The **Ogden Tables**¹ give the appropriate number of years' purchase. Since life expectancy in the BVI is about three years less than in the UK (using the **CIA Yearbooks** as a source²), it was necessary to increase Ms. Mejia's notional age from 27 to 30. The number of years' purchase was (rounded up) 50.5 years. The annual cost of the drugs is US\$204. The total award for the future cost of the drugs is thus US\$10,302 (50.5 years' purchase x US\$204).
- [4] The cost to date of the painkillers is US\$153 plus physician's fees of US\$748.
- [5] (c) In assessing special damages, I held that there is in this Territory no requirement at common law of "strict proof" of such damages and that **Murphy v Mills**,³ properly understood, is not an authority for that proposition. In any event sections 63(1) and 64 of the **Evidence Act 2006**⁴ disapply any such rule of law.

¹ 8th Ed (updated August 2022)

assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1098911/Ogden_Tables_8th_Edition_Updated_Final_8-8-22.pdf (accessed 25th October 2022).

² www.cia.gov/the-world-factbook/countries/british-virgin-islands/#people-and-society

www.cia.gov/the-world-factbook/countries/united-kingdom/#people-and-society (both accessed 25th October 2022)

³ (1976) 14 JLR 119.

⁴ No 15 of 2006, Laws of the Virgin Islands.

- [6] I assessed special damages (other than Pregabal-M) to date at US\$13,167.56.
- [7] (b) In assessing damages for voluntary care, I took a figure for the salary of a nursing assistant, taking US\$20,770 per annum (US\$10.94 per hour gross) as the low end of the earnings spine for such work, and deducted 12 per cent to reflect the social security, National Health Insurance and payroll tax payable to give a net US\$9.63 per hour. I then multiplied that by a reasonable daily number of hours of care, fixed at 3 hours a day, to give a figure of US\$1,750 for two months' gratuitous care.
- [8] (a) As to damages for pain suffering and loss of amenity, I held damages should be divided into two parts. The first part compensating the shock and horror of the attack and then the two month period of recovery; the second part the lifetime neuropathic pain and the scarring. There should then be final check of the overall reasonableness of the award.
- [9] As to the first part, I held that a 2015 case from the Commonwealth of Dominica, **State v Kenneth Francis**,⁵ was a good comparable. The judge had awarded XC\$7,500 (or US\$2,777). Using figures for GDP *per capita* from the data.un.org website, I calculated that the GDP *per capita* of the BVI in 2020 (the most recent figures) was 6.50 times greater than that of the Commonwealth of Dominica in 2015. Multiplying US\$2,777 by 6.50 gave an adjusted figure of \$18,044 for the award in **Francis**. I held US\$20,000 was appropriate for this first part of the claim on the facts of the current case.
- [10] As to the second part, I held that the reduction in the discount rate from the standard 2.5 per cent in the Eastern Caribbean to 0.5 per cent in territories using US dollars needed to be reflected in the damages awarded for the life-time consequences to Ms. Mejia of the attack. The most appropriate way of doing this was to take a daily rate for pain, suffering and loss of amenity.

⁵ [2015] ECSCJ No 277 (13th November 2015).

- [11] General damages should in principle be comparable as between different torts: **John v MGN Ltd**.⁶ The daily rate for tetraplegia (also known as quadriplegia) should bear some comparison with damages for wrongful imprisonment, where a daily rate of damages has long been applied. Our Court of Appeal in **Guishard v Attorney-General of the Virgin Islands**⁷ held that US\$400 per day was appropriate for false imprisonment, so that can reasonably be taken as an appropriate comparable for the daily rate in the most serious personal injuries.
- [12] On the facts of the current case, I accepted Ms. Bute's submission that a figure of US\$3.00 per day was appropriate. This gave an award of US\$3,000 to date and (applying 50.5 years' purchase as above in relation to Pregabal-M) US\$55,300 for the remainder of Ms. Mejia's life. There were no relevant contingencies to take into account. There was no evidential basis for making a discount for the contingency she might die younger; she might die older. The life tables already take these contingencies into account.
- [13] I cross-checked the award of US\$78,300 for pain, suffering and loss of amenity against three comparables put forward on behalf of the claimant. I concluded that the award was reasonable and divided it two-thirds for pain and suffering and one third for loss of amenity.
- [14] The total award to Ms. Mejia, including interest, was US\$106,931.93.

The facts

- [15] Ms. Mejia made a statement to police on 30th December 2019. It gives the account of the attack in similar terms to her statement of claim, which (with minor grammatical corrections) says this:

“On the 17th day of December 2019... the claimant... left for her then residence in at Sea Cows Bay. She arrived at the apartment building just after 11.30[pm]. [She] entered the premises and was about to make her way up the stairs to her apartment that was on the 3rd floor... Four pit bull

⁶ [1997] QB 586.

⁷ [2020] ECSCJ No 327, [2021] 1 LRC 510 at [46].

dogs walked up slowly to her on her left side... [S]he was scared and frightened at the sight of the four dogs [and] froze, not knowing whether to continue to walk or to run.

While [she] was thinking about how to deal with the situation, the dogs began to attack [her]. All four dogs jumped/pounced on [her] and began biting her about her body. As soon as the dogs began to attack [her, she]...started crying for help at the top of her lungs... The claimant, who at the time of the attack was pregnant, fell to the ground. When the claimant hit the ground, she experienced a sharp pain in her stomach. [She] tried to fend off the dogs but was not successful at doing so.... [S]he used her hands to cover her face fearing that one of the dogs may eventually get hold of her face. Eventually one grabbed her right ear and she sustained injury to same.

The claimant, who was just outside of the apartment where the defendant lives, remembered seeing lights on in his apartment and hearing his daughter crying, but no one came to her rescue... Despite the [pain] in her stomach and the pain and burning from her injuries, [she] managed to get up and pushed her way on to the balcony of apartment 4. Covered in blood, scared, in pain and traumatized [she] kept crying for help until one of the other tenants rescued her...."

- [16] She arrived at hospital shortly after midnight. I have seen photographs of the extensive bandaging on all four limbs and her head after admission to hospital. The report from the hospital dated 10th January 2020 following her discharge on 23rd December 2019 says:

"The... patient was seen on 18/12/19.

She presented to the ER after being attack[ed] by a group of 4 pit-bull dogs in the yard of her apartment complex. She alleged that the attack was unprovoked. The immunization status of the animals is unknown by the patient at the time but it was later confirmed by police officers during her hospital stay that the dogs have been immunized. She was walking home after work when the attack occurred. She was then rushed to the ER by her consort and landlady. On arrival to the ER she complained of severe, generalized body pains, shaking of her upper teeth and loss of control of her urine during the attack.

...[A]ccording to a recent ultrasound, she was approximately 2 months pregnant.

On examination

The patient was in severe painful distress and very tearful.

...

Musculo-Skeletal

There were multiple puncture wounds, abrasions, erosions and superficial lacerations to the 4 limbs. The largest wounds were located to the lateral right leg distally, medial right arm and did not involve any torn muscle or neurovascular injury. The subcutaneous fat was seen protruding from the puncture sites along the medial arm. There were superficial linear abrasions to the upper back. There were superficial erosions to the occipital scalp.

ENT

The upper left incisor is shaky with mild tenderness on palpation.

...

Abdomino-pelvic Ultrasound showed 0.6cm subchorionic bleed. The patient was referred for Gynaecology assessment in view of the findings.

The patient remained in hospital for Daily wound dressings, IV [intravenous] antibiotics, analgesia and supportive care. She was discharged home on 24th December 2019."

- [17] The on-going pain from the accident is set out in the report of Dr. Peralta, set out below.
- [18] At the assessment of damages Ms. Mejia gave evidence to me. She seemed a witness of truth who did not exaggerate her injuries. I was able to see the scarring. The scarring of her right leg was particularly unsightly. It extended down most of the lower part of the leg with some scarring above the knee. She had two scars on her right arm. Although Ms. Mejia showed me her ear, there was only a small amount of damage and it did not appear unsightly. She said she had a scar at the top of her left leg, but for reasons of modesty I did not see it. Her evidence, which I accept, was that she was self-conscious as a result of the scarring and wore less revealing clothing than she would have preferred, if she had not been injured by the dogs. She could no longer pursue her exercise regime.

(d) The current value of the claim in respect of painkillers

- [19] Ms. Mejia was born on 18th June 1995. She is thus currently 27 years old. She has permanent damage to the myelin sheath around the axons (nerves), particularly to her right leg and foot, which causes ongoing neuropathic pain. Dr Carlita Peralta, Ms. Mejia's physician in the Dominican Republic, says in a report of 18th June 2021 in not very good translation (to which I have made minor grammatical corrections):

"[The claimant] has to keep the right foot in permanent relaxation and take her medication in time, so that the pain, the sensation of [electrical] current, the cramps and dizziness can calm a little. Most of the muscles bitten by the dogs were totally affected. The degrading of the nerves that cause pain in the right buttock and the sensation of dizziness and pain over time, may get worse in the affected area.

The most wounded area constantly produces the sensation of electricity in the right foot therefore, the patient must follow the treatment for better results...

I confirm that Anyelina Mejia Villa has a moderate axon myelin injury of the right peroneal branch. It is a permanent injury which she must not stop using her medications or make heavy force on the right foot.

I conclude that she is suffering moderate axon myelin injury, predominantly of the right peroneal branch. Therefore I recommend Pregabal-M medication treatment at bedtime."

- [20] In order to determine the capital sum she now requires to pay for the painkillers over the rest of her life, it is necessary to consider three matters: firstly, her current life expectancy; secondly, the appropriate rate of discount to take into account the investment return on the capital sum given by way of damages; and thirdly, the likely change in the cost of the painkiller (or any substitute which may later be prescribed).
- [21] So far as this third point is concerned, the Court cannot speculate. The cost at present is US\$17 per month, or \$204 per annum. It is possible that in the future there will be new and better drugs than Pregabal-M. Such drugs may be more expensive than Pregabal-M. On the other hand, it may be that the cost of Pregabal-M will reduce as more generic versions become available: see **Warner-Lambert Co**

LLC v Generics (UK) Ltd t/a Mylan,⁸ where the UK Supreme Court disallowed Pfizer, the original patentee of Pregabal-M, a patent extension for the drug. (If the new drugs were better than Pregabal-M, then the increased cost of the new drug would be partially met by a reduction in the damages for pain and suffering which I award below. There would be an element of swings and roundabouts.) The only sensible course in my judgment is to assume that the price of the drug will remain the same in real terms for the rest of Ms. Mejia's life.

[22] As to the second point, in **Bernal v Riley**,⁹ a case in Gibraltar from 2016, I discussed the history up to that point of fixing an appropriate discount rate. I said:

44. When assessing damages for future loss it is necessary to discount the future loss to reflect the fact that the claimant is receiving an accelerated payment. In **Mallett v McMonagle**,¹⁰ the House of Lords approved a discount rate of 4–5%. Lord Diplock held¹¹ that a plaintiff would prudently invest any lump sum in a mix of property, shares and short-term high-yielding securities and achieve that return.

45. Unfortunately, that judicial investment advice proved wildly wrong. In 1973–74, the London stock market collapsed, as did the price of gilts. Inflation soared. Anyone following Lord Diplock's advice would have lost most of his or her money.

46. In **Wells v Wells**,¹² the House of Lords held that the discount rate for future losses should be assessed based on the rates available for UK Government index-linked stock. They held in the headnote to the report in *The Law Reports*:

'...[An] injured plaintiff was not in the same position as an ordinary prudent investor and was entitled to the greater security and certainty achieved by investment in index-linked government securities, in respect of which the current net discount rate was 3 per cent...'

47. Before **Wells** was decided, the Westminster Parliament had passed the **Damages Act 1996**.¹³ This gave the Lord Chancellor the power to fix the

⁸ [2018] UKSC 56, [2018] RPC 21, [2019] 3 All ER 95, [2019] Bus LR 360.

⁹ 2016 Gib LR 314,

www.gibraltarlaws.gov.gi/uploads/judgments/2016/2016GibLR314.pdf#viewer.action=download

¹⁰ [1970] AC 166.

¹¹ At p 175.

¹² [1999] 1 AC 345.

¹³ 1996 c. 48.

discount rate for future losses. However, in fact the Lord Chancellor decided to await the House of Lords decision in **Wells** before exercising those powers. After the result in **Wells** was known, he then consulted and in 2001 made the **Damages (Personal Injury) Order 2001**,¹⁴ which fixed the discount rate for future loss at 2.5%. [That order was still in force in 2016, notwithstanding that the yields on index-linked gilts had dropped.]

48. In **Simon v Helmot**,¹⁵ the plaintiff suffered catastrophic injuries in a road traffic accident in Guernsey. The Guernsey courts held that the **Damages Act 1996** did not apply in the Channel Islands. They therefore had to determine the discount rate for the future loss. The plaintiff submitted that 0.5% should be taken as the discount rate for non-earnings related losses and minus 1.5% for earnings related losses. The defendant submitted that 2.5% would be appropriate for both. The Royal Court at first instance applied a single discount rate of 1%.

49. The plaintiff appealed and the defendant cross-appealed. The Guernsey Court of Appeal (Sumption, Jones and Martin JJA.) allowed [the] 0.5% and minus 1.5% for which the plaintiff had argued. The defendant's appeal to the Privy Council was dismissed.”

[23] Subsequently, the Lord Chancellor, Liz Truss, reduced the statutory discount rate under the **Damages Act 1996** to minus 0.75 per cent: **Damages (Personal Injury) Order 2017**.¹⁶ The effect of this move of the discount rate into negative territory was very substantially to increase damages awards in respect of future losses. It was particularly disliked by the insurance industry. (An attempted judicial review, however, failed: **R (Association of British Insurers) v Lord Chancellor**.¹⁷) The negative interest rate was justified by the holding in **Wells** that personal injury claimants invested — and were entitled to invest — in extremely safe assets typified by index-linked gilts.

[24] Subsequently a new section A1 and Schedule A1 were inserted into the **Damages Act 1996**.¹⁸ Para 4(3) of Schedule A1 provides that in fixing the discount rate:

¹⁴ SI 2001 No 2301.

¹⁵ 2009–10 GLR N [16]; on appeal, 2009–10 GLR 465; on further appeal, [2012] UKPC 5; 2011–12 GLR 517; [2012] Med LR 394.

¹⁶ SI 2017 No 206.

¹⁷ [2017] EWHC 106 (Admin).

¹⁸ Civil Liability Act 2018, c. 18, section 10.

“the Lord Chancellor must make the following assumptions—

- (a) the assumption that the relevant damages are payable in a lump sum (rather than under an order for periodical payments);
- (b) the assumption that the recipient of the relevant damages is properly advised on the investment of the relevant damages;
- (c) the assumption that the recipient of the relevant damages invests the relevant damages in a diversified portfolio of investments;
- (d) the assumption that the relevant damages are invested using an approach that involves—
 - (i) more risk than a very low level of risk, but
 - (ii) less risk than would ordinarily be accepted by a prudent and properly advised individual investor who has different financial aims.”

[25] It can be seen that assumption (d) is that the portfolio will be invested in more risky investments than is warranted by **Wells**. Pursuant to this new power, the Lord Chancellor, David Gauke, fixed the discount rate at minus 0.25 per cent.¹⁹

[26] None of these statutory changes in the United Kingdom apply in this jurisdiction. The position at law is therefore still governed by **Wells**. However, in a US dollar economy it is in my judgment inappropriate to apply the return on index-linked bonds denominated in Sterling and linked to United Kingdom measures of inflation (currently the Retail Price Index, but due to be changed shortly to the Consumer Price Index: see **R (BT Pension Scheme Trustees Ltd) v UK Statistics Authority**²⁰).

[27] The obvious equivalent in a US dollar economy is the United States Treasury index-linked bond, usually known as TIPS (Treasury Inflation-Protected Securities). There are some differences to the UK position. TIPS are not available in the extremely long duration of some UK index-linked gilts (of which the 0.125% 2073 gilt is currently the longest). Instead the longest standard TIPS is a ten year bond. Further, there are proportionately fewer TIPS compared to fixed interest US bonds,

¹⁹ Damages (Personal Injury) Regulations 2019, SI 2019 No 1126.

²⁰ [2022] EWHC 2265 (Admin).

so there is greater volatility. Nonetheless they are in my judgment the closest ultra-safe investment available in US dollar terms.

- [28] In **Craig Hartwell v Kelvin Laurent**,²¹ Hariprashad-Charles J sitting in the Virgin Islands applied the **Wells** 2.5 per cent rate directly. However, the point as to UK linkers vs TIPS was not argued and may in 2006, in those pre-Global Financial Emergency times, have been immaterial. The issue can in my judgment properly be looked at again, given the substantial financial and economic changes since 2006.
- [29] In my judgment the rate of real return on TIPS is the appropriate discount rate in this Territory.
- [30] The next question is to assess what that rate might be. There are two alternatives. Firstly, it would be possible to take the real rate of return on a spot basis at the date of the judgment. The problem with this is that it potentially leads to frequent changes in the investment return which the Court must assume, as is witnessed by the exceptional market volatility in the last two months. Secondly, it is possible to take an average over a longer period. This is what the Lord Chancellor in the UK does when fixing the rate, where the **Damages Act** provides for five yearly reviews.²² It has the advantage of ensuring consistency and assisting settlements. In my judgment this is the appropriate course to adopt.
- [31] The historic rates of return on TIPS are available from the St Louis branch of the Federal Reserve Bank.²³ These show real rates of about 0.5 per cent in 2018 rising slowly to 1.1 per cent in 2019 before dropping (shortly before Covid) to zero in early 2020. During Covid, the rate dropped to about minus 1 per cent before picking up this year, reaching a figure of just over 1.5 per cent in the recent market turmoil. If one looked at these figures on their own, the appropriate discount rate might well

²¹ [2006] ECSCJ No 151.

²² Schedule A1 para 1(3).

²³ fred.stlouisfed.org/series/DFII10 (accessed 25th October 2022).

be one of nought per cent. However, in my judgment, the weight to applied to the rates of return during the Covid lockdown should be reduced. The years of the pandemic were truly unique and hopefully we shall never see them again during our lifetimes. In my judgment, looking at the matter in the round, a figure of 0.5 per cent for the discount rate is appropriate.

[32] I turn then to the appropriate multiplier. No life tables have been put in evidence for this Territory. It is, however, possible to use the **Ogden Tables**,²⁴ prepared for the United Kingdom. This was done in **Hartwell**, but no adjustment was made there for the different life expectancies here and in the United Kingdom. Again the point does not seem to have been argued. Life expectancy at birth for women in the BVI is 81.25 years.²⁵ In the United Kingdom, the comparable figure is 84.04 years, somewhat under three years more.²⁶

[33] Ms. Mejia is currently 27 years old. In order to obtain a comparable figure from the **Ogden Tables** it is necessary to add three years to her age. Table 2 in the **Ogden Tables** gives the years' purchase for a 30 year old woman at a discount rate of 0.5 per cent as 50.32, which I shall round up to 50.5 to reflect that her life expectancy is slightly less than 3 years lower than in the UK. This is the multiplier I shall take.

[34] The claim in respect of the future cost of Pragabal-M is thus \$204 times 50.5, or \$10,302. In addition, in 2021 Ms. Mejia incurred physician's costs of \$748 in investigating the cause of the pain and her best treatment. She purchased the drug from June 2021 to February 2022 (nine months), when she ceased to take it temporarily because she discovered she was pregnant. The cost for this period was \$153. The total which I allow in respect of Pragabal-M is \$901 damages to date and \$10,302 for future costs.

²⁴ 8th Ed (updated August 2022).

assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1098911/Ogden_Tables_8th_Edition_Updated_Final_8-8-22.pdf (accessed 25th October 2022).

²⁵ www.cia.gov/the-world-factbook/countries/british-virgin-islands/#people-and-society (accessed 25th October 2022).

²⁶ www.cia.gov/the-world-factbook/countries/united-kingdom/#people-and-society (accessed 25th October 2022).

(c) Special damages

[35] I turn then to the claim for special damages. I consider first an evidential question. A number of the heads of claim for special damages are not fully supported by the receipts. It has been held in some states and territories of the Eastern Caribbean Supreme Court that there is a common law rule that claims for special damages be “strictly proven”. This is taken to require the production of receipts or other documentary evidence showing the special damages claimed. This line of reasoning has been followed in this Territory by Masters in three recent decisions: **James Lowry v Radwan Kaid**,²⁷ **Aliston Wheatley v Kevin Moorehead** ²⁸ and **Wakeem Guishard v The Attorney General of the British Virgin Islands**.²⁹

[36] English law does recognise in some circumstances a requirement of strict proof of some facts by the production of documentation, but the circumstances are quite limited. **Phipson on Evidence** says:³⁰

“[S]trict proof of a transaction by the production of the document is sometimes required, though the terms thereof may not be in dispute. Thus, on a charge of perjury committed in proceedings before justices for refusing to leave licensed premises, the licence must be produced, and oral testimony by the proprietor that he is licensed is inadmissible.³¹ The courts have likewise found that the proper evidence of the existence of insurance is the policy, or secondary evidence thereof.³²”

The learned editors of **Phipson** give no support for any *general* requirement that as *a matter of law* receipts be produced in support of a damages claim.

[37] The origin in the Caribbean of a binding legal requirement to that effect is **Murphy v Mills**.³³ The facts were straightforward. The plaintiff was struck by the defendant’s

²⁷ [2020] ECSCJ No 335 at [74].

²⁸ [2020] ECSCJ No 69 at [75].

²⁹ [2018] ECSCJ No 277. The case was appealed, but no point on this was argued: see [2020] ECSCJ No 327 at [10] *per* Farara JA.

³⁰ 20th Ed (2021) at para 42-18.

³¹ *R v Evans* (1890) 17 Cox 37, *R v Lewis* (1872) 12 Cox 163, *R v Willis* (1872) 12 Cox 164.

³² *R v Doran* (1791) 1 Esp 127, *R v Kitson* (1853) 1 Dears CC 187; cf *R v Bilson* (1807) Russ & Ry 138.

³³ (1976) 14 JLR 119.

lorry and suffered injury. The defence was that the lorry was nowhere near the locus at the time of the accident. The trial judge rejected that defence and his finding on this was upheld by the Court of Appeal of Jamaica. The significance of the case is in this passage of the judgment of the Court given by Hercules JA, where he said:

“...I am not happy about the awards under the heads of loss of earnings and general damages. In his statement of claim the respondent pleaded ‘Loss of earnings for eight months at \$120.00 per month, \$960.00’. In examination-in-chief he said: ‘I could not work for about six months. I usually earn as a mason \$120.00 to \$130.00 per month.’ Then in cross-examination he said: ‘I have no salary slips for my earnings. I work for Sharp Construction in Montego Bay. Was not working at the time.’ On this evidence I fail to understand the award of six months at \$120.00 per month. In the case of **Bonham-Carter v Hyde Park Hotel Ltd**,³⁴ Lord Goddard CJ declared:

‘On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying “This is what I have lost; I ask you to give me these damages.” They have to prove it.’

In this case I feel very much the way Lord Goddard felt and I would disallow any award under the head of loss of earnings.”

[38] It is readily apparent why the Court in **Murphy v Mills** rejected this special damages claim *on the facts*. The plaintiff was not working at the relevant time, so he could not recover damages for loss of earnings. (No alternative claim of loss of a chance to work was advanced.) I cannot, however, read the passage cited as laying down a *rule of law* that special damages have to be proved in any particular way. This, however, is not the interpretation made by the learned law reporter for the Jamaica Law Reports. His headnote says: “In any action in which a plaintiff seeks to recover special damage the onus is on him to prove his loss strictly.”

[39] The requirement to produce documentation in support of special damages has been shown to be unworkable. In **Grant v Motilal Moonan Ltd**,³⁵ the defendants

³⁴ (1948) 64 TLR 177 at p 178.

³⁵ (1988) 43 WIR 372.

smashed their lorry into the plaintiff's house, destroying a large amount of furniture and other household goods. The plaintiff, the following day, made an inventory of her losses, but she had few receipts to show the value of the goods destroyed. The Court of Appeal of Trinidad and Tobago held that she had adequately proved her losses, since there were good reasons why she could not provide "strict proof".

[40] In **Liverson Sandy v Antigua Public Utility Authority**,³⁶ Mitchell J sitting in Antigua followed **Grant** and held: "As much certainty and particularity must be insisted on in proof of special damages as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done." This impliedly rejects the **Murphy v Mills** strict evidence standard and adopts a "judge must decide on the facts" approach.

[41] Another workaround which has been used to escape the "strict proof" rule is to award "nominal damages". The usual legal meaning of the expression is that it is a sum given where a loss is presumed as a matter of law but where no loss was in fact suffered. The amount in this sense was at common law traditionally 40 shillings or £2 sterling: see the discussion in **Re Koshigi Ltd (in Liquidation)**.³⁷ However, the Privy Council in **Greer v Alstons Engineering Sales & Services Ltd**³⁸ approved this passage in **McGregor on Damages**,³⁹ where the learned editors said:

"Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss".

[42] In **Greer**, the plaintiff had failed to prove the detailed loss from the wrongful detainer of a digging machine, but the Privy Council upheld an award of \$5,000. It held:

³⁶ [2003] ECSCJ No 166 at [10].

³⁷ [2020] ECSCJ No 400 at [17] (US\$100 awarded as an updated figure for nominal damages, where no loss was in fact suffered).

³⁸ [2003] UKPC 46, (2003) 63 WIR 388 at [7].

³⁹ 13th Ed (1972) at para 295.

“Although the loss under this head was unquantified, it is the duty of the court to recognise it by an award that is not out of scale.”⁴⁰

[43] This guidance of the Privy Council is of course binding in cases to which it applies. However, in my judgment resort to nominal damages should not be used as a general escape hatch for awarding some damages, where the claimant’s problem is not a difficulty quantifying loss but instead comes from an absence of receipts or other documentation. Such cases need to be addressed on their merits without artificial restrictions on the assessment of evidence. If a witness gives evidence which the Court accepts as truthful on the quantification of a particular loss, there is no reason to reject the evidence simply because it is not supported by documentary evidence. It is a matter for assessment on a case-by-case basis.

[44] In my judgment, there is at English common law no rule of law that receipts must be produced in order to claim special damages. I hold that in this Territory “strict proof” in that sense not is required. The supposed rule in **Murphy v Mills** is not in my judgment part of the common law of evidence here.

[45] This is not to say that any of the BVI cases I have cited were wrongly decided on the facts. The requirement to produce receipts is a salutary one. As a matter of the assessment of the facts, the Court is entitled to take a sceptical view of claims to losses unsupported by documentary evidence. This is in my judgment the approach taken by Lord Goddard CJ in **Bonham-Carter**. He was not setting out any rule of law as to the type of evidence required to prove a properly pleaded claim for special damages; he was warning against allowing vague claims based on speculation without an adequate evidential substratum.

[46] There is another reason why the supposed rule in **Murphy v Mills** should not be followed in this Territory. The **Evidence Act 2006**,⁴¹ so far as material, provides:

⁴⁰ Greer at [9].

⁴¹ No 15 of 2006, Laws of the Virgin Islands.

“63(1) The evidence that is relevant in proceedings is evidence that, if it were accepted, could rationally affect, whether directly or indirectly, the assessment of the probability of the existence of a fact in issue in the proceedings.

...

64 Evidence that is relevant in proceedings is, subject to this Act, admissible, and shall be admitted in the proceedings, and evidence that is not relevant in the proceedings is not admissible.”

- [47] This is an emphatic affirmation of the Benthamite approach to evidence — allowing all relevant evidence in and leaving it to the fact-finding judge to determine the likely truth.⁴² In my judgment, these statutory principles are incompatible with a legal requirement of “strict proof” of special damages.
- [48] Accordingly, applying this approach I turn to the claim to special damages of Ms. Mejia. The initial medical expenses at Pebbles Hospital are fully documented, as is a visit to a dermatologist in July 2021 to seek treatment in respect of the scarring. These items total \$4,878.56, which I allow in full.
- [49] The claimant said that on 1st February 2020 she had to go to the B & F Medical Complex because she was suffering excruciating abdominal pain. It is true that the attack by the dogs caused immediate pain in her stomach. However, there is no medical evidence that the sudden onset pain on 1st February 2020 was caused by the dogs. Ms. Mejia was pregnant at the time of her visit to the Medical Complex and it is in my judgment possible that the abdominal pain was related to her pregnancy rather than the attack by the dogs. In these circumstances, I do not find the claim for \$691.63 is proven.
- [50] The claimant makes two special damages claims in respect of her scarring. The first is for treatment by Dr. Stout on 27th May 2020. She claims the treatment cost of \$580.00. This claim is supported by a short medical report from Dr. Stout and is in my judgment unproblematic. I allow this claim in full. The second is for various

⁴² See William Twining, *Theories of Evidence: Bentham and Wigmore* (Stanford, Ca., 1985).

skin products recommended to her by her dermatologist. There is, however, no medical evidence that the need for these products is caused by the attack. They appear to be general skin care products rather than specific medical products designed to ameliorate the unsightly scarring. I disallow this item.

[51] Ms. Mejia claims US\$2,220 in respect of lost wages in the initial two months following the attack. I allow this claim. Ms. Mejia makes no claim for prospective loss of wages or disadvantage on the labour market. I therefore do not need to consider the extent to which **Smith v Manchester** awards⁴³ have been superseded in the Eastern Caribbean by Tables A to D of **Ogden's Tables**.⁴⁴ These Tables give a more accurate (and usually greater) assessment of a claimant's disadvantage on the labour market as a result of his or her injuries, however, they are based on now somewhat old UK data.

[52] Ms. Mejia says that in the course of the attack her trousers, shoes and wig were damaged. I accept this evidence and the values of \$40, \$130 and \$270 (a total of \$440) put on the items. Ms. Mejia also says that in the course of the attack she lost two gold rings. She was able to produce receipts for these and show they were worth \$4,220. I am more sceptical of this claim, but ultimately I accept that Ms. Mejia was a witness of truth and allow this items. The total claim under these heads of \$4,660.

[53] Ms. Mejia also claimed \$300 in respect of bracelets and a silver chain, which she said were damaged in the attack. She did not produce this jewellery in evidence, so I have no basis for assessing the likely cost of repair or the reduction in value. In these circumstances, there is no sensible basis on which I can assess a figure for damages. I disallow this item.

⁴³ *Smith v Manchester Corporation* (1974) 17 KIR 1, 118 Sol Jo 597.

⁴⁴ See the discussion in Section B of the 8th Edition pp 21-43, with Tables A to D themselves at pp 30-31.

[54] I therefore allow by way of special damages:

Hospital	\$4,878.56
Dermatologist	580.00
Lost wages	2,220.00
Jewellery etc	4,660.00

\$12,338.56

(c) Gratuitous care

[55] As to the claim for gratuitous care, what Ms. Mejia pleads is:

“38. The claimant was incapacitated for a period of two months, she had to rely on her aunt and [her] then fiancé to assist with the usual everyday chores that she would have competently done herself prior to the injuries. The claimant had to depend on her aunt and sometimes her then fiancé to bathe her, look after her hair and assist her with dressing.

39. The claimant’s aunt was her feet and hands and work[ed] endless[ly] ensuring the claimant was comfortable. The claimant’s aunt looked after her for a period of three months.”

[56] In principle, Ms. Mejia is entitled to claim in respect of the gratuitous care provided by her aunt and fiancé. **Bingham & Berrymans’ Personal Injury and Motor Claims Cases**⁴⁵ summarises the leading case of **Donnelly v Joyce**⁴⁶ in this way, with a helpful following note:

“The claimant, aged six, received injury to his leg in a road accident. After his discharge from hospital his mother gave up her work for six months to look after him. The judge awarded the claimant £147 in respect of her loss of earnings. On appeal the defendant argued that the time was not claimable by the claimant but that his mother might have recovered it had she been a party to the action.

Held, on appeal:

⁴⁵ 15th Ed (2018) at para 38.120.

⁴⁶ [1974] QB 454, approved by our Court of Appeal in *Cedric Dawson v Cyrus Claxton* [2005] ECSCJ No 33 and followed in various Masters’ decisions in this Territory: *Garna O’Neal v Steadroy Matthews* [2015] ECSCJ No 258, *Ellina Turnbull and another v Renard Benjamin* [2019] ECSCJ No 243 and *James Lowry v Radwan Kaid* [2020] ECSCJ No. 335.

The loss of the mother's wages was rightly claimed by and awarded to the claimant. It was his own loss — the existence of the need for nursing services of his mother, valued for the purposes of damages as the proper and reasonable cost of supplying those needs. It would not have been possible to recover loss of income as well as the value of the care provided. It does not matter, so far as concerns the defendant, how or by whom the services have been provided nor whether the claimant has a legal liability to repay the provider. Nor is the existence of a moral obligation a material factor, nor an agreement between the injured person and the provider of the services to pay for them... Contrary to the defendant's 'concession' the claimant's mother would not have been entitled to recover the loss herself had she been a party.

Note—See **Housecroft v Burnett**,⁴⁷ where this reasoning was reiterated. The test has been established as 'what is it reasonable for this claimant to pay those who have cared for him as a reward for what they have done?'. The conventional way that this is assessed is to calculate the number of hours spent by the voluntary carer, multiply this by the commercial rate for care and then deduct a percentage to reflect the fact that tax and National Insurance is not payable on those damages (25–33%). However, the court can also make a lump sum award to reflect the additional need for care and to allow the claimant to provide some monetary acknowledgement to show appreciation for what the carer has done."

- [57] In the earlier part of this year, the Government of the Virgin Islands were advertising a post of nursing assistant at the Adina Donovan Home for the Elderly at a salary of \$22,770 to \$29,124.⁴⁸ Based on a 40 hour week, that converts into an hourly rate of \$10.94 to \$14.00. Due to their limited nursing experience (so far as the evidence adduced shows), the starting point in calculating the appropriate figure for the voluntary services of the aunt and the fiancé is in my judgment the lower figure of \$10.94 gross. Deductions to reflect the net figure then need to be made.
- [58] In this Territory, an employee's contribution to social security is 4 per cent and to the National Health Insurance scheme 3¾ per cent. The payroll tax payable by an employee is 8 per cent, but the first \$10,000 of an employee's annual earnings are tax-free. Someone on somewhat over \$22,000 per annum would therefore only pay

⁴⁷ [1986]1 All ER 332 (English Court of Appeal).

⁴⁸ The web-page has since been removed.

4.4 per cent of their gross wages in payroll tax. Instead of the 25 to 33 per cent deduction appropriate in England, in my judgment the appropriate deduction here for someone earning \$22,770 is (with rounding) 12 per cent. (It may be said that the aunt and the fiancé would not have reached the \$10,000 threshold, so the 4.4 per cent payroll deduction should not be made. However, the comparison in my judgment needs to be with a full time paid carer, so a calculation *pro rata*-ed from an earner on \$22,770 is appropriate.)

[59] From the \$10.94 hourly rate, therefore 12 per cent needs to be deducted, on the basis that that is what a nursing assistant would pay in social security, National Health Insurance and payroll tax. This gives a net hourly figure of \$9.63.

[60] No records were kept of the time spent by the aunt or the fiancé whilst caring for Ms. Mejia. That is not in my judgment fatal to a claim. It is true that in **James Lowry v Radwan Kaid**,⁴⁹ Master Sandcroft held at para [73] that once a **Donnelly v Joyce** claim was established strict proof of the cost of a carer was required by **Murphy v Mills**. For the reasons set out above, I do not agree. Indeed Master Sandcroft himself in his next para [74] slightly softened his approach to the evidence. In my judgment, the Court has to do the best it can based, if necessary, in the absence of more specific evidence, on its own knowledge of local wage conditions and the likely time which would have been expended by the voluntary carers, given the claimant's injuries. If there are real uncertainties, these will be resolved in favour of the defendant.

[61] Applying this approach, I consider that a reasonable figure should be three hours a day for the first two months. After two months, Ms. Mejia went back to work. Whilst it may well be that her aunt continued to support her for another month, the evidence suggests that Ms. Mejia was able to look after herself. I therefore disallow any sum in respect of this month. This gives a total of 183 hours (61 days x 3 hours). At \$9.63 an hour, that gives a total award under this head of \$1,762.29, say \$1,750.

⁴⁹ [2020] ECSCJ No 335.

(d) General damages

[62] Turning to general damages, I have already set out Ms. Mejia’s account of the accident and its sequelae, the report of Dr. Peralta and my own assessment of her scarring.

[63] The figure to be awarded for general damages is always “that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.”⁵⁰

[64] The elements of a claim for general damages for personal injury are set out in the oft-cited passage of **Cornilliac v St Louis**:⁵¹

“It is essential... to recapitulate the several considerations which the learned judge had to bear in mind when making his assessment [of general damages]. I think they were accurately summarised... substantially as follows: (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering which had to be endured; (iv) the loss of amenities suffered, and (v) the extent to which, consequentially, the appellant’s pecuniary prospects have been materially affected.”

[65] The proper approach to assessing general damages and in particular the attention which should be given to the English **Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases** (formerly the **Judicial Studies Board Guidelines**)⁵² were set out by Webster JA in **Collin Hope Jr. v Edmond Lake**,⁵³ as follows:

“The approach of the courts of the Eastern Caribbean to the assessment of damages and the courts’ reliance on the **Guidelines** is admirably

⁵⁰ *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 at p 39 *per* Lord Blackburn.

⁵¹ (1965) 7 WIR 491 (Court of Appeal of Trinidad and Tobago) at p 492.

⁵² Now in its 16th Ed (2021).

⁵³ [2022] ECSCJ No 66 at [6].

summed up by the Privy Council in the case of **Scott v Attorney General of the Bahamas**,⁵⁴ as follows:

'What those **Guidelines** can provide, of course, is an insight into the relationship between, and the comparative levels of compensation appropriate to different types of injury. Subject to that local courts remain best placed to judge how changes in society can be properly catered for. Guidelines from different jurisdictions can provide insight but they cannot substitute for the Bahamian courts' own estimation of what levels of compensation are appropriate for their own jurisdiction. It need hardly be said, therefore, that a slavish adherence to the **JSB Guidelines**, without regard to the requirements of Bahamian society, is not appropriate.'

In other words, the **Guidelines** can be resorted to in appropriate cases but they should not be used in place of or to contradict local decisions that are applicable to the case being decided."

[66] Since Webster JA delivered that judgment, there is an additional reason why this Court should not follow the **Guidelines** in any close fashion. The US Dollar-Sterling exchange rate (traditionally known as "cable") has crashed from \$1.36 when that judgment was handed down on 23rd February 2022 to an all-time low of \$1.03 on 26th September 2022 before partially recovering to \$1.13 on 25th October 2022. It cannot sensibly be suggested that a claimant entitled to £10,000 under the English **Guidelines** would be awarded \$13,600 on 23rd February 2022, \$10,300 on 26th September 2022, but \$11,300 on the day of the assessment of damages.

[67] It is also worth noting that the English **Guidelines** are only updated for inflation. There is no consideration of any changes in the general economic conditions in the United Kingdom, either by way of change in Gross Domestic Product or in earnings. I discussed this issue in **Bernal v Riley** at paras [12]ff. I noted that the **Guidelines for the Assessment of General Damages in Personal Injury Cases in Northern Ireland**⁵⁵ (colloquially known as the **Green Book**) gave higher figures than the

⁵⁴ [2017] UKPC 15, [2017] 3 LRC 704 at [25].

⁵⁵ Now in its 5th Ed (2018)

www.judiciaryni.uk/sites/judiciary/files/media-files/Green%20Book%202019%20Fifth%20Edition%2025.02.19%20PDF.pdf

English and Welsh Guidelines, the reason being (as was explained in the first foreword⁵⁶ to the **Northern Irish Guidelines**) that:

“the level of damages in Northern Ireland is significantly higher than in England and Wales. As was pointed out by Lord Lowry in **Simpson v Harland & Wolff**⁵⁷ this variation is in large measure due to the fact that in Northern Ireland the assessment of damages was in the hands of juries until 1987.”

Juries would take into account changes in the economic circumstances of the jurisdiction, including changes in the real value of wages and improvements in the economy, as they clearly were doing in Northern Ireland before 1987.

- [68] The English Court of Appeal considered the general appropriateness of the then tariff for general damages in March 2000, when it handed down its judgment in **Heil v Rankin**.⁵⁸ At para [29], it noted that:

“the changes which take place in society are not confined to changes in the RPI [Retail Price Index]. Other changes in society can result in a level of damages which was previously acceptable no longer providing fair, reasonable and just compensation, taking into account the interests of the claimants, the defendants and society as a whole. For this reason, it is clearly desirable for the courts at appropriate intervals to review the level of damages so as to consider whether what was previously acceptable remains appropriate.”

- [69] Evidence of changes in the real value of the Gross Domestic Product *per capita* was adduced, but the Court of Appeal commented at para [100]:

“Although we have taken into account in coming to our conclusions the information provided as to the GDP, we do not consider that that index should be treated as a substitute for the RPI. The RPI provides a simple straightforward measure of the value of money. It is readily understood. The use of the GDP was introduced into these proceedings at a very late stage. The defendants had no opportunity to examine its validity in depth.

⁵⁶ Reproduced in the current edition.

⁵⁷ [1988] NI 432, quoted at [17] in *Riley v Bernal*.

⁵⁸ [2001] QB 272.

The appropriate circumstances and the method of its use are more complex than is the case with the RPI, and, while it might be a help in considering whether levels of damages require readjustment, it would be inappropriate at this stage for it to be used generally.”

[70] Despite the comparative antiquity of **Heil v Rankin**, the English Court of Appeal has not revisited this point on GDP. The only across-the-board change since 2000 was the 10 per cent uplift in general damages provided for in **Simmons v Castle**.⁵⁹ This increase had nothing to do with the general adequacy of the level of general damages, but was effectively a *douceur* given for the abolition of the recoverability from defendants of uplifts to costs payable under conditional fee agreements: see the discussion of this at paras [24]ff of **Bernal v Riley**.

[71] Further, and importantly for current purposes, the English **Guidelines** do not take into account the reduction in the discount rate since **Wells**, which I discuss above in relation to special damages. I discuss further below the impact of the lower discount rate on general damages.

Damages for the attack and the first two months

[72] In the current case, it is sensible to look at the award in two parts. The first part will be the damages for the initial attack and the two month period of recuperation after it. The second part is the ongoing pain and suffering and loss of amenity from the continuing pain in the right leg and from the scarring. This will last Ms. Mejia’s whole life. Where an award is divided in this way it is then necessary to look back and make sure the overall award is not excessive. This avoids any form of double-counting and gives a final check that the overall figure is reasonable.

[73] The most relevant case in respect of the first part in my judgment is **State v Kenneth Francis**.⁶⁰ This was a criminal case in the Commonwealth of Dominica from 2015, but Taylor J awarded damages on a common law basis. The facts, from the

⁵⁹ [2012] EWCA Civ 1039; [2013] 1 WLR 1239.

⁶⁰ [2015] ECSCJ No 277 (13th November 2015).

headnote in the **Eastern Caribbean Supreme Court Personal Injury Cases Digest 2000-2017**, were as follows:

“The defendant and the complainant were cousins. They played video games together and visited each other’s home. The respondent had a history of mental illness and was an out-patient of the psychiatric hospital. On the night in question he entered the complainant’s home, uninvited, and attacked him with an ice pick inflicting seventeen stab wounds to various parts of his body including the chest, back, head and knee. The attack was unprovoked since both the complainant and his mother were asleep at the time of the attack. The victim was hospitalised for two days. The respondent had no previous convictions and was not known to be violent. This was confirmed by family members and shared by community persons interviewed. The respondent pleaded guilty and showed remorse for his actions. By date of trial [three and a half years after the attack] the complainant had made a full recovery.

- [74] The judge awarded XC\$7,500, or US\$2,777 in November 2015.
- [75] Can that figure be applied directly in this Territory? Or must there be an adjustment to reflect different economic conditions between the Commonwealth of Dominica and the Virgin Islands? It is well-established that awards of general damages must take into account general economic conditions: **Jag Singh v Toong Fong Omnibus Co Ltd**,⁶¹ **Chan Wai Tong v Li Ping Sum**,⁶² and **Heil v Rankin**,⁶³ where Lord Woolf MR noted that “[a]s the prosperity of Hong Kong expanded, the courts [in that jurisdiction] by stages increased their tariff for damages so that it approached the level in England.”
- [76] The Court of Appeal in **Guishard v Attorney-General of the Virgin Islands**⁶⁴ recognised that, in considering comparables applicable here in regards to general damages, attention needs to be paid to “US dollar precedents” rather than non-US dollar precedents. I do not read this as meaning Eastern Caribbean dollar

⁶¹ [1964] 1 WLR 1382 (Privy Council).

⁶² [1985] AC 446 (Privy Council).

⁶³ At pp 297-298.

⁶⁴ [2020] ECSCJ No 327, [2021] 1 LRC 510 at [46].

precedents should be ignored. Quite the contrary. Awards in neighbouring countries and territories are relevant: **CCAA Ltd v Julius Jeffrey**.⁶⁵ Indeed, they are more relevant than English caselaw. However, there is little authority on how XC\$ precedents should be converted into US\$ figures. A straight spot-rate conversion at XC\$2.70 to the US dollar would ignore the need to take the varying economic conditions across the Eastern Caribbean into account, as required by the cases cited in the previous paragraph. (Purchasing power parities would be inadequate, because they would merely be a measure of the real value of money, without regard to overall economic strength.)

[77] The two obvious ways of matching awards in different jurisdictions is to adjust them having regard to economic circumstances. The main methods of doing this are looking at gross domestic product (“GDP”) or at earnings. The Privy Council has disapproved using cost of living indices: **Scott v Attorney-General** at [26]. GDP figures are easily available on the internet. Earnings figures are available too, but figures from different jurisdictions are liable to use different methodologies, so that it is difficult to compare earnings in one jurisdiction with those of another: see the discussion in **Walker v Ormrod Electrical Supply Co Ltd**.⁶⁶ (Issues as to treatment of earnings in the informal economy can also be problematic.) In my judgment, the most reliable means of comparison across jurisdictions is to use GDP *per capita*: **Attorney-General of St Helena v AB and others**.⁶⁷

[78] Taking this approach, the GDP *per capita* of the Commonwealth of Dominica in 2015 was US\$7,596.⁶⁸ The GDP *per capita* of the British Virgin Islands in 2020 was US\$49,357,⁶⁹ 6.50 times the figure for Dominica. If that factor is applied to the US\$2,777 figure, it gives a figure of US\$18,044.

⁶⁵ [2004] ECSCJ No 40 (Court of Appeal) at [9] and [10].

⁶⁶ *Walker v Ormrod Electricity Supply Co Ltd* 2017 Gib LR 229 at [53]

www.gibraltarlaws.gov.gi/uploads/judgmentes/2017/2017GibLR229.pdf#viewer.action=download

⁶⁷ [2020] UKPC 1 at [36].

⁶⁸ data.un.org (select GDP and GDP per capita) (all references from this site were accessed on 25th October 2022).

⁶⁹ *Ibid.*

- [79] Inflation in the BVI has been 2.8 per cent in 2021.⁷⁰ The official inflation figure for 2022 is unavailable, but is unlikely to be substantially less than 2021. (It not in practice possible to convert the 2015 Dominican figure using 2022 BVI GDP directly, because GDP figures are subject to correction and the latest UN figures are for 2020.) An uplift of about 5 per cent to reflect inflation is appropriate, so as to increase the US\$18,044 figure to US\$18,946.
- [80] I set out below the three cases on attacks by dogs cited by Ms. Bute. These cases do not distinguish between the attack and the immediate sequelae on the one hand and the long-term consequences on the other. I shall consider these cases as part of the final assessment process when deciding whether the overall figure for general damages is reasonable.
- [81] Subject to this last stage, US\$20,000 in my judgment is a proper figure for the horror of the attack on Ms. Mejia; her fears for her unborn child; the pain during the initial two months from the serious injuries to all four of her limbs and to her ear (but not including any award for the long-term sequelae after the initial two month recovery phase); the loss of a tooth; the pain during the two month period of recovery; and the humiliation of having to rely on her aunt and fiancé for intimate daily care during that period. Applying the Dominican figure merely by converting the Eastern Caribbean dollar figure into US dollars would grossly undercompensate Ms. Mejia.
- [82] Ms. Bute submitted that a figure of US\$35,000 to US\$40,000 would be appropriate for this initial two months. Those figures represent a daily rate during the two months of US\$574 to US\$656. Even if half the award in respect of this period were taken to be the damages solely for the initial attack, the daily rate during the remainder of the two months of recovery would be US\$287 to US\$328. That in my judgment is too high.

⁷⁰ bvi.gov.vg/sites/default/files/inflation_rate_by_category_2013-2021.pdf (accessed 26th October 2022).

Future pain, suffering etc: the effect of a lowered discount rate

- [83] The lowering of the discount rate is relevant when considering the amount to award for future pain, suffering and loss of amenity. As Widgery LJ said in **Mitchell v Mulholland (No 2)**:⁷¹

“No one doubts that an award of damages must reflect the value of the pound sterling at the date of the award and conventional sums attributed to, say, the loss of an eye, have been adjusted upwards in recent years on that account. Inflation which has reduced the value of money at the date of the award must, thus, be taken into account, but an award which is proper according to the value of the pound at the date when it is made is not to be increased merely because each £1 awarded may have decreased in real value in five or ten years’ time. **Once the award is made, the plaintiff must protect himself against a subsequent fall in the value of money by prudent investment**, as must a legatee under a will or the winner of a football pool. **This principle applies equally** to an award of damages for loss of ability to earn as it does **to an award for loss of amenity and pain and suffering**. Each is a capital sum to compensate for present loss.” (My emphasis.)

- [84] Thus, as discount rates drop, to give a certain amount of damages for each day the claimant suffers pain etc the capital sum must increase. In order to determine what a reasonable daily rate for Ms. Mejia’s ongoing pain, suffering and loss of amenity, it is useful to look at what the daily rate for the most serious injuries might be. The daily rate applicable to Ms. Mejia can then be put in context.
- [85] I discussed the effect of reduced discount rates in **Sullivan v Care Agency**,⁷² using the example of **Povey v Governors of Rydal School**.⁷³ Povey was a 19 year old, who suffered tetraplegia (also known as quadriplegia) as a result of an accident in the gym of the defendant school. He had an agreed life expectancy of 25 years. I shall not set out the full calculations, which can be seen in **Sullivan**. It was,

⁷¹ [1972] 1 QB 65 at p 83.

⁷² 2017 Gib LR 131

www.gibraltarlaws.gov.gi/uploads/judgments/2017/2017GibLR131.pdf#viewer.action=download

See also *Cassidy v Gibraltar Health Authority* 2017 Gib LR 117

www.gibraltarlaws.gov.gi/uploads/judgments/2017/2017GibLR117.pdf#viewer.action=download

⁷³ [1970] 1 All ER 841.

however, possible using the judge's own discount rate of 2.5 per cent to reverse engineer the daily rate of damages which Crichton J, the trial judge, had impliedly awarded. The daily figure for pain, suffering and loss of amenity was £3.5s.9d. Updated to 2016 in line with UK earnings, that sum was worth £101.31 per day. Updated to the second quarter of 2022 (using the latest figures for UK earnings), the sum becomes £123.58 per day.⁷⁴ I summarised the position using 2016 figures as follows:

"26. Using the figures for 50 years' expectation of life, a tetraplegic entitled to a daily rate of £101.31 would receive:

- (a) a lump sum of £1,029,500 in general damages using a 2.5 per cent discount rate ($£101.31 \times 365 \times 27.84$ years' purchase)
- (b) £1,620,400 at a 0.5 per cent discount rate ($£101.31 \times 365 \times 42.82$); or
- (c) £2,285,250 at a minus 0.75 per cent discount rate ($£101.31 \times 365 \times 61.80$).

27. Using the same figures for 50 years of life, a tetraplegic awarded the English maximum [under the **Guidelines** then in force] of £337,700 would receive:

- (a) a daily rate of £33.23 using a 2.5 per cent discount rate ($£337,700 \div [27.84 \text{ years' purchase} \times 365]$);
- (b) a daily rate of £21.61 at a 0.5 per cent discount rate ($£337,700 \div [42.82 \text{ years' purchase} \times 365]$); or
- (c) a daily rate of £14.97 at a minus 0.75 per cent discount rate ($£337,700 \div [61.80 \text{ years' purchase} \times 365]$).

It can be seen that all these figures are very much lower than Crichton J.'s daily rate of £3.5s.9d., which, even if this figure is only increased in accordance with the UK Retail Price Index, is £50.56 in October 2016 money. Indeed, the daily rate of £14.97 at the current statutory UK discount rate [of minus 0.75 per cent] is less than 30 per cent of the figure Crichton J awarded in 1969.

28 The position is even starker if figures for gross domestic product ('GDP') are taken [and these are then set out]."

⁷⁴ Weekly wages in the UK were £464 in 2016 and £566 in the second quarter of 2022, an increase of 22 per cent:

www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearnings (whole economy level, seasonally adjusted regular pay excluding arrears KA17) (column AA in the spreadsheet) (accessed 25th October 2022).

- [86] A similar exercise can be carried out with a reported case from St Lucia on quadriplegia. In **Cletus Dolor v Alcide Antoine and other**,⁷⁵ the claimant, who had been an acrobatic dancer, was crippled in a motor car accident in 1999 when he was 27 years old. The trial judge, Hariprashad-Charles J, giving judgment in 2004, when the claimant was 31 years old, considered that he would have worked until the age of 60. She awarded him damages for loss of income based on a multiplier of 16. She used the same multiplier for the pampers and catheter he would require for the rest of his life. Thus, although she does not say so expressly, it is apparent that he was not expected to live past 60. His life expectancy in 2004 at the date of the trial was accordingly 29 years.
- [87] From **Ogden's Tables**,⁷⁶ it can be seen that a man with that life expectancy would normally be 58 years old. We know from **Hartwell**, decided only two years later, that Hariprashad-Charles J habitually applied a discount rate of 2.5 per cent. **Ogden's Tables** show that the number of years' purchase at that discount rate for 29 years is 20.11.
- [88] The judge awarded XC\$250,000 for pain and suffering and loss of amenity, which covered five years to trial and 29 years to death. The figure can be divided XC\$36,750 to trial and XC\$213,250 to death. The XC\$213,250 gives a figure of XC\$29.05 per day ($\text{XC\$213,250} \div [20.11 \text{ years' purchase} \times 365 \text{ days}]$). This was worth US\$10.76 per day.
- [89] GDP *per capita* in St Lucia in 2005 (the closest date in the UN statistics) was US\$6,852. GDP *per capita* in the BVI in 2020 (the latest available date in the UN statistics) was US\$49,357, about 7.2 times more. Increasing the XC\$29.05 or US\$10.76 by that factor gives a daily rate of US\$77.51. With inflation in the BVI in

⁷⁵ [2004] ECSCJ No 28.

⁷⁶ Table 11, reading from the column with a zero discount rate. Technically an earlier edition of the Tables should be used, but none is readily available. Since life expectancy has risen since 2004, a slightly lower figure for years' purchase might also need to be used.

2021 and 2022 totalling about 5 per cent, the uplifted figure is US\$81.38 per day for quadriplegia.

[90] There is another reported case of quadriplegia from St Lucia, **Auguste v Neptune**,⁷⁷ but insufficient detail is given of the plaintiff's life expectancy to do a similar calculation.

[91] If due allowance is not given for the reduction in the discount rate, there is a lack of inter-generational fairness. Using a high discount rate benefits the elderly but disadvantages the young. For example, a new-born girl entitled to damages of US\$1.00 a day (adopting the figures from Table 2 of the **Ogden Tables**) will have a life expectancy of 87.71 years in the BVI.⁷⁸ Using a discount rate of 2.5 per cent will give a figure for years' purchase of 35.59, whereas a discount rate of 0.5 per cent will give 70.79 years' purchase, nearly twice as much. One can set out the figures for various ages as follows:⁷⁹

Age	YP at 0.5%	YP at 2.5%
0	70.79	35.59
10	63.54	34.07
20	55.89	32.10
30	47.88	29.56
40	39.59	26.36
50	31.10	22.39
60	22.68	17.66
70	14.69	12.36
80	7.95	7.16
90	3.56	3.37
95	2.37	2.28

⁷⁷ (1997) 56 WIR 229.

⁷⁸ This is the figure for a three-year-old in the UK. The adjustment does not entirely tie in with the life expectation for women in the CIA Yearbook, but the difference probably relates the different years used. The 8th Edition of Ogden's Tables is based on the Office of National Statistics' population projections for 2018: see p 61 Appendix A para 4. Ogden deliberately ignores the effect of Covid: see p 63 Appendix A para 8. Nothing turns on this for the purposes of the tabulation: a year or two in life expectancy only marginally affects the magnitude of the differences.

⁷⁹ A similar exercise was carried out in *Walker v Ormrod Electricity* at [69], where the difference between a discount rate of 5 per cent and of minus 0.75 was calculated. A teenager with a 70 year life expectancy had years' purchase of 19.51 at 5 per cent but a colossal 94.55 years' purchase at minus 0.75.

[92] It follows in my judgment that the opinion of the learned editors of **Kemp & Kemp on the Quantum of Damages**⁸⁰ can no longer be supported, where they suggest:

“that the claimant’s expectation of life is an important but not necessarily decisive consideration is awards in respect of paraplegia or tetraplegia. Should the court make a significantly lower award to such a claimant who has 30 rather than 40 years to live? We think not. On the other hand, the difference between 10 and 20 years might be significant. The same applies to disparities of age. Should the 20-year-old paraplegic get substantially more than a 40-year-old suffering similar injuries? We doubt it. Perhaps, if explanation is needed, it is to be found in the fact that the upper limits for such awards as identified in the cases or to be found in the **JSB Guidelines** are not necessarily reserved for the worst imaginable example of that kind of injury. There is, in effect, an artificial ceiling to the various awards but the corollary thereof should be that injuries of great but inevitably varying degrees of severity are trapped at or just below that ceiling. Generally we suggest that courts should be slow to make narrow distinctions between broadly similar injuries suffered by people who, whilst having different expectations of life, have nevertheless a substantial number of years ahead of them.”

[93] That was, in my judgment, a defensible position from the 1960’s to the 1980’s, where a discount rate of 4 to 5 per cent was applied. With much lower discount rates, and indeed negative discount rates, it is no longer supportable. This indeed is a central difficulty with the **Judicial College Guidelines**. They are based on Court decisions from that earlier era but have made no amendments to reflect the lower discount rate. The learned editors of **Kemp & Kemp** treat the ranges of awards outlined in the **Guidelines** as if they were (with the sole exception of inflation) fixed in stone. That is contrary to authority. Indeed the continuing reference in **Kemp** to the **JSB Guidelines** suggests this part of the commentary has not been revisited for a long time.

[94] The *range* for tetraplegia in the current edition of the **Guidelines** is given at Item 2(a) as £324,600 to £403,990. (The lower figure is about 80 per cent of the upper

⁸⁰ Looseleaf at para 3-015.

figure). Yet this *range* is very much less than is given from the table immediately above, even looking just at the figures calculated at the 2.5 per cent discount rate (32 years' purchase for a 20 year old versus 22 years' purchase for a 50 year old — 22 being 69 per cent of 32), let alone those at the 0.5 per cent discount rate (55 years' purchase versus 31 years' purchase respectively — 31 being 56 per cent of 55).

- [95] However, in fact most of the £324,600 to £403,990 range does not relate to life expectancy at all. The **Guidelines** explain:

“The typical case of tetraplegia attracting an award in the mid-range of this bracket is appropriate for cases in which the injured person is not in physical pain, has full awareness of their disability, has an expectation of life of 25 years or more, has retained powers of speech, sight, and hearing but needs help with bodily functions. At the top end of the bracket will be cases where physical pain is present or where there is a significant effect on senses or ability to communicate.

- [96] It follows in my judgment that damages for long-term pain, suffering and loss of amenity need to be revised upwards. The easiest way of doing this is to use daily rates. With the availability of life tables such as **Odgen**, the mathematics of converting daily rates into lifetime awards is comparatively simple.

The Elton John point

- [97] Awards of general damages for personal injury need to bear some relation to awards for general damages in other areas of tort. This can be seen from **John v MGN Ltd**,⁸¹ where a jury awarded Elton John £75,000 ordinary damages and £275,000 exemplary damages for a libel committed by the defendant publisher of the *Sunday Mirror* newspaper. The newspaper had alleged that John had followed a bizarre diet where he chewed food but did not swallow it. It was, the newspaper asserted, a form of bulimia.

⁸¹ [1997] QB 586.

[98] It had long been the practice where juries were determining damages for neither counsel nor the judge to mention specific figures or give guidance as to sums which might be awarded for general damages. The Court of Appeal held that this practice should be changed. Lord Bingham MR said at p 614:

“It has often and rightly been said that there can be no precise correlation between a personal injury and a sum of money. The same is true, perhaps even more true, of injury to reputation. There is force in the argument that to permit reference in libel cases to conventional levels of award in personal injury cases is simply to admit yet another incommensurable into the field of consideration. There is also weight in the argument, often heard, that conventional levels of award in personal injury cases are too low, and therefore provide an uncertain guide. But these awards would not be relied on as any exact guide, and of course there can be no precise correlation between loss of a limb, or of sight, or quadriplegia, and damage to reputation. But if these personal injuries respectively command conventional awards of, at most, about £52,000, £90,000 and £125,000 for pain and suffering and loss of amenity (of course excluding claims based on loss of earnings, the cost of care and other specific financial claims), juries may properly be asked to consider whether the injury to his reputation of which the plaintiff complains should fairly justify any greater compensation. The conventional compensatory scales in personal injury cases must be taken to represent fair compensation in such cases unless and until those scales are amended by the courts or by Parliament. It is in our view offensive to public opinion, and rightly so, that a defamation plaintiff should recover damages for injury to reputation greater, perhaps by a significant factor, than if that same plaintiff had been rendered a helpless cripple or an insensate vegetable. The time has in our view come when judges, and counsel, should be free to draw the attention of juries to these comparisons.”

[99] This ability to compare awards is of course not limited to personal injury and defamation. It must also exist as between personal injury and false imprisonment. This is particularly significant because guidance on damages for false imprisonment exists as to a sum of damages for each day the claimant is imprisoned. Lord Woolf MR sitting in the English Court of Appeal in **Thompson v Metropolitan Police Commissioner**⁸² gave guidance on the daily rate which a jury should be directed

⁸² [1998] QB 498.

could properly be awarded for false imprisonment. I set out the relevant passages in **Thompson** in **Riley v Bernal**⁸³ and analysed the subsequent English cases on the relevant daily rates. The English cases divide the damages claim into two parts: the first the period of the initial imprisonment, where the claimant suffers the shock of incarceration; the second the period after the initial shock has worn off. The daily rate for the first day of imprisonment is high, dropping in the days thereafter until reaching a continuing flat rate in the second period.

[100] This practice was adopted in Trinidad and Tobago: **Millette v McNicolls**.⁸⁴ Daily rates then became the practice in the Eastern Caribbean Supreme Court as well: **Takitota v Attorney-General**,⁸⁵ **Everette Davis v Attorney-General of St Christopher and Nevis**⁸⁶ and **Guishard**. For the flat rate in the second period, the Court of Appeal in **Guishard** approved in this Territory a daily rate of US\$400, but declined to interfere with the US\$300 per day awarded by the master at first instance.

[101] Earlier this year, Simons J, sitting in the Supreme Court of the Turks and Caicos Islands, awarded a daily rate of US\$200: **Paintimikavalan and others v Director of Immigration**.⁸⁷ The GDP *per capita* of Turks and Caicos in 2020 was US\$23,881.⁸⁸ The BVI's in 2020 was US\$49,357, or 2.07 times greater, so this ties in well with the US\$400 in **Guishard**, which was cited.

[102] The significance of these figures is that they give a useful comparator as to what might be an appropriate daily rate for the most serious personal injuries, such as tetraplegia. In such cases the claimant will typically be paralysed from the neck down and lack use of his or her arms and legs, or only to a very limited degree. Whereas damages for false imprisonment are given for imprisonment in a penal

⁸³ 2016 Gib LR 314 at [58]ff.

⁸⁴ (2000) 60 WIR 362 (Court of Appeal of Trinidad and Tobago), approved by our Court of Appeal in **Guishard**.

⁸⁵ [2009] UKPC 11, 26 BHRC 578.

⁸⁶ [2014] ECSCJ No 142.

⁸⁷ [2022] TCASC 13.

⁸⁸ data.un.org

institution, damages for tetraplegia are given for imprisonment in the claimant's own body. The daily rate for awards for the one and the other should bear some correspondence to each other. This does suggest that the award in **Dolor v Antoine** was on the low side.

[103] If an award of US\$400 per day is appropriate for the most serious injuries, the Court must then consider what would be the appropriate award for the much smaller claim for ongoing pain and physical disfigurement from which Ms. Mejia suffers and will continue to suffer.

[104] Ms. Bute submitted that a figure of US\$3.00 per day would be appropriate. That is less than one per cent of the figure for tetraplegia. In my judgment that is amply justified. Indeed, a case might be made for slightly more. Ms. Bute did not suggest that there should be a different rate for those periods when Ms. Mejia was unable to take Pregabal-M.

[105] The number of days from 17th February 2020 to 31st October 2022 is 987 (366 + 365 + 256). Applying that daily rate of US\$3.00, gives a figure of US\$2,961 for general damages to date, say US\$3,000.

[106] For the future, the amount is US\$55,297.50 (\$3 x 365 x 50.5 years' purchase), say US\$55,300.

Reasonableness

[107] I now conduct the final stage of checking the reasonableness of these figure for general damages. The total is \$20,000 for the initial attack and recovery phase, \$3,000 for damage thereafter to date and \$55,300 for future pain suffering and loss of amenity. This is a total of \$78,300.

[108] I compare these figures with those in the cases of dog attacks to which Ms. Bute has drawn my attention. In **Samantha Anthony (as next friend of Okarie**

Anthony) v Gregory Edward,⁸⁹ Georges J, sitting in St Lucia in 2010, awarded a nine year old boy XC\$12,000 (= US\$4,444) for less serious injuries than in the present case. GDP *per capita* in St Lucia in 2010 was US\$8,540. GDP *per capita* in the BVI in 2020 was US\$49,357 or 5.8 times greater, so as to give a comparable of US\$16,050 (US\$2,777 x US\$49,357 ÷ US\$8,540).⁹⁰ With 5 per cent interest for 2021 and 2022, the comparable figure is US\$16,850.

[109] In **Manuel Sosa v Yusuf Muhammad Bilal**,⁹¹ the injuries were again less serious. Arana J awarded 10,000 Belizean dollars (or US\$5,000) in 2015, when the GDP *per capita* of Belize was US\$4,776. GDP *per capita* in the BVI in 2020 was 10.3 times greater. With the 5 per cent interest, this gives a comparable of US\$54,075.

[110] **JT v AM and another**⁹² was a more serious case than the present in that the plaintiff suffered ongoing psychiatric consequences of the attack, including post-traumatic stress disorder. Barr J, sitting in the Irish High Court in 2017, awarded a total of €180,000 (about US\$153,000 at the time). Irish GDP *per capita* in 2017 was US\$71,391,⁹³ so conversion of US\$153,000 into the 2020 BVI equivalent GDP (US\$49,357 *per capita*) lowers that figure by 31 per cent to US\$105,800. With the 5 per cent interest, the comparable figure is US\$111,100. The judge in Ireland did not, however, consider the effect of the drop in the discount rate on the general damages for future pain, suffering and loss of amenity, so the award may be on the low side. (The drop in the discount rate in the Eurozone was at least as severe as in the United Kingdom and may have been greater.)

⁸⁹ [2010] ECSCJ No 300.

⁹⁰ data.un.org for all the GDP figures in the next paragraphs.

⁹¹ Claim No 405 of 2013 in the Supreme Court of Belize.

www.belizejudiciary.org/wp-content/uploads/2015/01/Supreme-Court-Claim-No-405-of-2013-Manuel-Sosa-v-Yusuf-Muhammad-Bilal-Bilal-Welding.pdf

⁹² [2017] IEHC 516.

⁹³ The 2017 figure comes from SYB64_230_202110_GDP and GDP Per Capita, not from SYB65_230_202209_GDP and GDP Per Capita, on the data.un.org site.

- [111] In my judgment, **Anthony v Edward** is something of an outlier. The figure of \$78,300 fits well between **Sosa** and **JT v AM**. In my judgment it is reasonable and there is no need to revisit the initial assessment.
- [112] I do have to confess to a degree of discomfort in using daily rates instead of going straight to lump sum capital amounts chosen from within a range. Throughout my professional career, general damages have been considered as straight lump sums — first in the case law reported in **Kemp & Kemp**, then from 1992 in the **JSB Guidelines** and subsequently in the **Judicial College Guidelines**. However, if the underpinning for these lump sum figures has gone as a result of the dramatic drop in the available returns on safe investments, there is no convincing alternative to using daily rates to calculate a lump sum. Younger claimants will be grievously undercompensated if no change is made. Moreover **John v MGN Ltd** requires the Court to compare damages for false imprisonment with damages for personal injury. That can only be done with any sort of accuracy, if daily rates for personal injury are calculated.
- [113] It should be noted that continuing with lump sums (awarded straight without any intermediate step of calculating a daily rate) will not in some way abolish the ability to calculate daily rates. Once a length of time is established during which pain, suffering and loss of amenity are suffered, then a daily rate can be generated using simple assumptions as to the discount rate. There will *always* be a daily rate which is implicit, whether the judge fixing the damages is aware of it or not: see my workings in **Povey** and **Cletus Dolor**. Crichton and Hariprashad-Charles JJ may have had no conscious knowledge that their awards were capable of being turned into daily rates, but like Monsieur Jourdain, who was surprised to learn he had been speaking prose all his life,⁹⁴ their judgments necessarily imply a daily rate.

⁹⁴ Molière, *Le Bourgeois Gentilhomme*, Act 2, scene 2.

Interest

[114] I turn then to the calculation of interest. The Court of Appeal in **Auguste v Neptune**⁹⁵ held:

“[T]he 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 (see **Jefford v Gee**⁹⁶).

There was no evidence led as to the rate of interest on a short-term investment. In deciding the issue of interest before judgment, therefore, I propose to use the ‘legal rate’ (as it is called in the **St Lucia Civil Code**) of 6 per cent per annum as the yardstick as the awardable rate and follow the afore-mentioned guidelines.”

[115] As in St Lucia there is no short-term investment rate in this Territory. Accordingly, it is necessary to use the rate of 5 per cent per annum payable under the **Judgment Act 1907**.⁹⁷

[116] The claim to interest comprise, 2 years 10 months at 2.5 per cent per annum (half of 5 per cent per annum) on these sums:

⁹⁵ (1997) 56 WIR 229 at p 239.

⁹⁶ [1970] 2 QB 130, [1970] 1 All ER 1202.

⁹⁷ Revised Laws of the Territory of the Virgin Islands cap 35.

Pragabal-M	\$901.00
Lost wages	2,220.00
Hospital	4,878.56
Dermatologist	560.00
Jewellery	4,660.00
Gratuitous care	1,750.00
	\$14,068.56
	x 7.1%
	\$998.87

[117] In addition, 10 months interest at 5 per cent (from the date of service of the claim form at the end of December 2021 to the end of October 2022) on \$78,300 gives a further \$3,262.50.

Total award

[118] The total award is therefore:

Specials to date	\$14,068.56
Interest thereon	998.87
Generals	78,300.00
Interest thereon	3,262.50
Future Pragabal-M	10,302.00
	\$106,931.93

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar