

**THE EASTERN CARRIBBEAN SUPRME COURT  
IN THE HIGH COURT OF JUSTICE**

**SAINT VINCENT AND THE GRENADINES**

**SVGHCV2019/0138**

**BETWEEN:**

**ANNESLEY ROBAN**

Claimant

**and**

**DELEX HORNE**

First Defendant

**THE ESTATE OF VEROL CASTILLO, deceased**

Second Defendant

**Appearances:**

Mr. Jadric Cummings for the Claimant  
Defendants absent and unrepresented

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2021: October 15;  
November 9.  
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- [1] **GILL, M.** This is an assessment of damages for personal injuries the claimant suffered in a motor vehicular accident that occurred as a result of the negligent driving of the first defendant.

**Background facts**

- [2] On 14<sup>th</sup> September 2016, the claimant Annesley Roban was a passenger in van registration number HQ229 owned by Verol Castillo of Georgetown, St. Vincent and the Grenadines, deceased (whose Estate is the second defendant), and driven by the first defendant Delex Horne of South Rivers, St. Vincent and the Grenadines. The said van overturned on its journey to Kingstown, on the Bridgetown Public Road, causing the claimant to sustain the following injuries:

- i. Fracture of the shaft of the left humerus, with deformity
- ii. Fracture of the right wrist.
- iii. Permanent non-union of the left humerus which renders his left arm disabled
- iv. Significant swelling of the left arm with varus deformity
- v. Lateral scar on left arm
- vi. Non-functionality of hemodialysis fistula on right hand
- vii. Severe, substantial and persistent pain
- viii. Compromised balance while standing or walking.

[3] At the time of the accident, the claimant was 51 years of age, having been born on 8<sup>th</sup> December 1964. He is now 56 years old. He is a retired sergeant of the Royal St. Vincent and the Grenadines Police Force. He joined the Force on 10<sup>th</sup> July 1987 and retired on 8<sup>th</sup> December 2019.

[4] It is noteworthy that two (2) years before the accident, in September 2014, the claimant was diagnosed with end-stage renal disease and began hemodialysis treatment on 24<sup>th</sup> September 2014 which entails three (3) treatment sessions per week. Hemodialysis is required for the claimant's survival.

[5] On 9<sup>th</sup> September 2019, the claimant filed the instant claim seeking for damages for personal injuries and loss arising from the accident. Judgment in default of acknowledgment of service was granted against the defendants on 5<sup>th</sup> January 2021. The defendants did not participate in the assessment proceedings. The evidence provided by the claimant is unchallenged.

### **Issue**

[6] The court must determine the quantum of damages to be awarded to the claimant.

### **SPECIAL DAMAGES**

[7] Special damages must be pleaded, particularised and proved. This fundamental principle was stated by Lord Diplock in **Ilkiw v Samuels and Others**<sup>1</sup> as follows:

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<sup>1</sup> [1963] 2 All ER 879 at 890

“Special damage in the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularised... it is plain law...that one can recover in an action only special damage which has been pleaded and of course, proved.”

- [8] As special damages, the claimant claims the cost of a police report in the sum of \$100.00. This report is not mentioned in any of the claimant's two (2) witness summaries and there is no evidence of payment of any item for that sum. That claim is disallowed.

[9] **Nursing/domestic care**

As special damages, the claimant also pleads damages for domestic assistance/nursing care up to the present. The claim is in respect of care provided by the claimant's wife. No amount is specified. However, the claimant relies on authorities to show his entitlement to damages under this head.

- [10] Since the date of the accident, the claimant and his wife Sandra aver that he has been unable to care for himself and perform the simplest of day-to-day tasks. Since the accident, these have become Sandra's responsibilities. The principle to be adopted in such circumstances was espoused by Lord Denning MR in **Cunningham v. Harrison**<sup>2</sup> as follows:

“... [I]t has been said in some cases that a plaintiff can only recover for services rendered to him when he was legally liable to pay for them...But, I think that view is much too narrow. **It seems to me that when a husband is grievously injured - and is entitled to damages - then it is only right and just that, if his wife renders service to him, instead of a nurse, he should recover compensation for the value of the services that his wife has rendered. It should not be necessary to draw up a legal agreement for them. On recovering such an amount, the husband should hold it on trust for her and pay it over to her.** She cannot herself sue the wrongdoer, see *Best v. Samuel Fox & Co Ltd* [(1952) A. C. 716]; but she has rendered services necessitated by the wrong-doing, and should be compensated for it. If she had given up paid work to look after him, he would clearly have been entitled to recover on her behalf: because the family income would have dropped by so much: see *Wattson v. Port of London Authority* [(1969) 1 Lloyd's Rep. at page 102] per Megaw J. **Even though she had not been doing paid work but only domestic duties in the house, nevertheless all extra attendance on him certainly calls for compensation.**” (Emphasis added)

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<sup>2</sup> [1973] 3 All ER 463 at 469; [1973] QB 942

[11] Based on this principle, in 2014, in **Cleos Billigny v. Kevon Jesse-Don Anderson et al**<sup>3</sup> Lanns M awarded the sum of \$500.00 per month for 5 months (\$2,500.00) for nursing care provided by the claimant's wife and family. At paragraph 40 of the judgment the learned master stated:

"It is the law that if a wife or mother or other member of the family undertakes to provide nursing care, an allowance will be made for the fair value of the services rendered because they are services made necessary by the injury, although the claimant has made no agreement to pay for them (See: **Cunningham v Harrison** [1973] QB 942; [1973] 3 All ER 463."

[12] In **Carter v. St Clare Latham Concrete and Aggregates Limited**,<sup>4</sup> Cottle M, as he then was, in 2006, allowed \$200.00 per month for post-accident care, both under special damages for care by the claimant's common law wife and her mother up to the date of assessment (\$4,600.00), and \$31,200.00 for future domestic care using a multiplier of 13 for the claimant who was almost 38 years old at the time of the assessment. Under special damages, the claimant sought an award of \$400.00 per month. However, the learned master was not satisfied by the evidence provided by the claimant as to the cost of domestic care. The defendant was willing to concede the amount of \$200.00. In **Cleos Billigny**, Master Lanns updated that award (which was stated in her judgment as \$300.00 per month) to "today's dollars", given the time span between the two cases. In the circumstances, the claimant submits that it is appropriate and reasonable to adopt the same approach in the instant case and for this sum to be updated to \$600.00 per month, given the 7-year time span since **Cleos Billigny**.

[13] The evidence reveals that after the claimant was injured, he needed great assistance. Paragraph 7 of the witness summary of Mrs. Roban reads:

*"7. Given the significant injuries to my husband's hands, he could not do anything for himself and everything had to be done for him. You had to guide him to go to the bathroom and because he cannot stand on his own, you had to put him on the seat. I had to bathe him, dry him and then put on every piece of his clothes. I had to feed him, hold him up to walk among many other things. I had to do everything for him. To this day, since the accident, I am still doing these things."*

[14] Considering the nature of the injuries suffered by the claimant and his complete dependence on his wife since the accident, the sum claimed is not unreasonable. I will

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<sup>3</sup> SVGHCV2013/0096 (delivered December 3, 2014)

<sup>4</sup> Claim No. 524 of 2005 (St. Vincent and the Grenadines), (delivered April 21, 2006)

award the claimant special damages for nursing/domestic care of \$600.00 per month, as proposed, from the date of the accident for 5 years and 1 month or 61 months in the sum of \$36,600.00.

### **GENERAL DAMAGES**

[15] The relevant factors to be taken into account in the exercise of an assessment of general damages were laid down by Wooding CJ in **Cornilliac v St. Louis**<sup>5</sup> namely:

- a) The nature and extent of the injuries sustained;
- b) The nature and gravity of the resulting physical disability;
- c) The pain and suffering which has been endured;
- d) The loss of amenities suffered; and
- e) The extent to which, consequentially, the claimant's pecuniary prospects have been materially affected.

#### **The nature and extent of the injuries sustained and the nature and gravity of the resulting physical disability**

[16] As a result of the accident the claimant suffered the injuries stated earlier at paragraph 2.

[17] After the accident, the claimant's injuries were treated in plaster and he underwent open reduction and internal fixation with plate and screws in April 2017. This was unsuccessful as there was no union of the fracture and the fixation became loose.

[18] In July 2017, the claimant underwent surgery with bone grafting at the Milton Cato Memorial Hospital to alleviate injuries sustained. Post-operative complications resulted in non-functionality to the fistula access site for hemodialysis on the right wrist requiring immediate repair and the need to create a temporary access site for hemodialysis.

[19] Despite successive corrective operations to the left humerus, there persists a non-union of the fracture to the mid-to-distal diaphysis of the left humerus, with deformity<sup>6</sup>.

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<sup>5</sup> (1965) 7 WIR 491

<sup>6</sup> Per medical reports of Dr. Charles D. Woods dated 5th June 2018 and Dr. Anil Ali dated 15th November 2018, annexed to the claimant's witness summary of 12<sup>th</sup> May 2021.

- [20] An updated medical report by Dr. Charles D. Woods, dated 12<sup>th</sup> May 2020, concludes that the claimant's end stage renal disease predisposes him to a *"high risk for intra operative and post operative complications if further surgery is attempted, and so a decision has been made not to attempt further surgery. As a result, Mr. Roban's disability [to his left arm] will be permanent."*
- [21] The divers medical reports exhibited in the case at bar reveal the extent and significance of the claimant's injuries suffered from the accident. The most notable are recorded in the findings of Dr. Anil Ali<sup>7</sup> where it is reported that "...Mr. Roban had significant swelling of the left arm with obvious varus deformity...There was a lateral scar on the left arm in keeping with previous surgery", as well as the findings of Dr. Charles D Woods<sup>8</sup> where he reported, in addition to his conclusion in the previous paragraph above, "He now has a permanent non union of the left humerus which renders his left arm disabled."
- [22] The medical reports of Dr. Malcolm Samuel<sup>9</sup> dated 30<sup>th</sup> January 2018 and 17<sup>th</sup> November 2020 speak to the impact which the accident and surgeries had on the claimant's hemodialysis which is required for his survival, including the damage caused to his fistula and the surgeries required to re-site and repair the fistula and create a temporary access site so that he could continue dialysis.

### **Pain and suffering and loss of amenities**

- [23] Under this head, the claimant proposes an award of \$225,000.00. First, the claimant asks the court to appreciate the distinction between an award for pain and suffering and one for loss of amenities. Sykes J in **Ebanks, Andrew v Jephther McClymont**,<sup>10</sup> a case out of the Supreme Court of Judicature of Jamaica, highlights the following principle when making an award for pain and suffering and loss of amenities:

"Damages for pain, suffering and loss of amenities

I fear that the common practice of making a single award for loss of pain and suffering and loss of amenities has only served to obscure the distinction between the two - a distinction specifically approved by the House of Lords in **H. West &**

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<sup>7</sup> Report dated 15<sup>th</sup> Nov 2018 annexed to the claimant's witness summary

<sup>8</sup> Report dated 12<sup>th</sup> May 2020 annexed to the claimant's supplemental witness summary

<sup>9</sup> Annexed to the claimant's witness summary filed 12<sup>th</sup> May 2021.

<sup>10</sup> [2007] 3 JJC 0803, JM 2007 SC 21, at paragraphs 59 and 60

**Son Ltd. v. Shephard** [1964] A.C. 326 and reaffirmed in **Lim Poh Choo** by Lord Scarman. His Lordship said at page 188:

*The effect of the two cases (Wise v. Kaye being specifically approved in H. West & Son Ltd. v. Shephard) is two-fold. First, they draw a clear distinction between damages for pain and suffering and damages for loss of amenities. The former depend upon the plaintiff's personal awareness of pain, her capacity for suffering. But the latter are awarded for the fact of deprivation — a substantial loss, whether the plaintiff is aware of it or not.*

What this means is that although a single figure is awarded for pain, suffering and loss of amenity, the judge should bear in mind that there are two distinct head of damages and so should be careful to make an award that takes this into account.”

#### Pain and suffering

- [24] The claimant's witness summary details the pain he felt immediately after the accident and which said pain still exists and permeates throughout his mal-united humerus 5 years later.
- [25] Paragraphs 9 and 10 of the said witness summary relay his version of the event, being fully conscious while the van overturned, and being pinned under the front passenger door screaming in pain for help. At paragraph 11, he describes that he was in excruciating pain and all that was done for him was to cast both of his arms at which time he was discharged home.
- [26] The claimant further relays the daunting experiences of multiple, unsuccessful, post-accident surgeries for which he was given pain killers that would wear off and the excruciating pain would return. The various medical reports also speak to the post-accident surgeries and their lack of success in uniting the claimant's broken humerus.
- [27] Photographs of the claimant's injuries at the time of the accident, and recently, evince the deformity and disablement of the claimant's left arm as cited in the medical reports and the witness summaries of the claimant and his wife Sandra Roban.
- [28] Another important element to which due regard must be given in the determination of a just award is the impact that the accident has had in respect of pre-existing conditions.
- [29] As a result of the fracture of the right wrist, which is where the claimant's fistula for hemodialysis is sited, he is wary of performing accustomed tasks with his right hand so as to not cause damage to the fistula. Due to the injury sustained to the left hand, that limb is

no longer a candidate for a fistula site, should damage occur to the current site on the right wrist. This has created great anxiety and weighs heavily on the claimant's psyche.

- [30] The claimant submits that given the permanent deformity and disablement of the his left arm, the swelling which ensues if undertaking strenuous activity and the pain he continues to feel to this day the award under this limb ought to account for the extent to which he has and continues to endure suffering from his injuries caused by the accident.

#### Loss of Amenities

- [31] Prior to the accident, the claimant went on long walks for exercise, general fitness and enjoyment. The injuries caused by the accident have now affected his balance and he is unable to walk long distances stably and reliably. He even requires the assistance of others to surmount inclines and stairs. Standing up, after sitting for long periods, also presents the claimant with great difficulty due to his impaired balance caused by his injuries.
- [32] The claimant's left hand is still swollen, and he derives no strength from his elbow to his shoulder, due to the fracture of the shaft of his humerus, which has not united. The arm is permanently disabled. As a result, he is unable to do ordinary and habitual tasks such as dressing himself, drying his skin and putting on his shoes. He primarily relies on his wife's assistance to complete these functions. He is also unable to lift heavy items and perform physically strenuous tasks around the house or at all as was accustomed. He avers also that he has now been forced to resile from the household role of protector.
- [33] The claimant's left arm is now permanently disabled which means that he will continue to suffer from the afflictions mentioned above, and in a state where he will be dependent on the assistance of others for the remainder of his life.
- [34] The claimant and his wife, Sandra, lament in their witness summaries the impact that the injuries have had on their sex life, to the point where it is for all intents and purposes, non-existent.

### Comparable awards

- [35] The claimant points out that there is a paucity of cases from St. Vincent and the Grenadines that are only remotely relatable in the extent and type of injuries sustained by the claimant in the case at bar, and submits that a more appropriate representation can be seen in cases from around the region.
- [36] In the case of **James v Sinclair et al**,<sup>11</sup> where the claimant's injuries were soft tissue whiplash of the cervical spine resulting in partial restriction of full neck movements; comminuted fracture of the head of right radius with subluxated right elbow; fracture of lower end radius and ulna and posterior shaft thereof in and above the right wrist joint; comminuted fracture of the left and mid shaft of ulna; permanent loss of fifty percent (50%) of movement of right lower limb, including elbow and wrist with concomitant atrophy of upper right limb muscles and loss of seventy percent (70%) of function of right hand; and loss of consciousness for over four hours, the claimant was awarded \$208,000.00 in general damages for pain and suffering and loss of amenities.
- [37] The claimant cites the following 3 cases out of Trinidad and Tobago as dealt with by Mohammed M, as she then was, in **Rampersad v Trinidad Contracting Limited**.<sup>12</sup> The adjustments are as stated by the learned master in the judgment.
- [38] The plaintiff in **Alexander v Moonian**,<sup>13</sup> a 35 year-old maintenance supervisor at the time of a motor vehicular collision, suffered multiple injuries to his right arm including his shoulder and forearm. His injuries included: (a) a compound fracture of the mid-shaft of the right humerus, with about 2½ inches of the bone missing with gross lacerations of the lateral aspect of the arm with extensive skin loss and multiple lacerations of the muscle of the right arm; and (b) compound fracture of the right elbow involving the joint end and a fracture of the ulna. There was laceration of the right forearm 3 inches long about the mid-shaft and another at the distal end one inch long. In 1972, Mr. Alexander was awarded TT\$70,000.00 in general damages (broken down as \$10,000.00 for pain and suffering; \$7,500.00 for 65% permanent partial disability involving weakness and limited movement

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<sup>11</sup> Claim No. 32 Of 1999 (Antigua and Barbuda)

<sup>12</sup> S. 1348 of 2003 (delivered September 27, 2011)

<sup>13</sup> High Court (Trinidad and Tobago) Claim No. 1996 of 1972, delivered April 29, 1976

of the fingers of the right hand; \$5,000.00 for loss of amenities and \$47,500.00 for loss of job support), which, adjusted to December 2010, was TT\$1,240,281.00. This amounts to EC\$496,112.40 (EC\$1=TT\$2.50). The **Rampersad** judgment does not state the adjustment formula used in December 2010.

- [39] In **Razac v. Ramsingh**<sup>14</sup> the plaintiff was 43 years at the time of the accident. He was a taxi driver who sustained a fracture of the right humerus about the middle, as well as fracture at the right elbow amounting to almost traumatic amputation at the elbow. There were also fractures of the major shaft of the humerus and at the middle shaft of the right ulna as well as proximal ends of phalanges. The sum awarded in 1973 was TT\$23,040.00 and adjusted to December 2010 was TT\$637,213.00 or EC\$318,606.50.
- [40] In **Gardener v. Coteau et al**,<sup>15</sup> the plaintiff was aged 61 at the time of the incident. He suffered compound comminuted fractures of the lower end of the right radius and ulna with considerable skin loss. He also fractured the 4<sup>th</sup> and 5<sup>th</sup> metacarpal heads. Skin grafting was done which was complicated by infection. His right elbow and forearm lost three quarters of their previous function. In 1975, the sum of TT\$24,000.00 in general damages was awarded and adjusted to December 2010 is TT\$429,932.00 or EC\$214,966.00.
- [41] In **Rampersad** itself, delivered in 2011, the plaintiff was injured during the course of his employment as a labourer when his left arm was trapped by a machine. He was 25 years old at the time. He had an extensive crush injury from the left shoulder to the elbow, a comminuted fracture of the left humerus and the ulna nerve of the arm was completely severed. His left arm was left non-functional. His incapacity restricted his ability to perform simple tasks for which he required assistance from his wife or son. He was awarded TT\$230,000.00, EC\$115,000.00 in general damages for non-economic loss with the sum of TT\$87,570.00 paid to him as Workmen's Compensation to be deducted.
- [42] The court referred to the reservation, and I consider here, the statement of the Privy Council in **Seepersad v Persad & Anor**<sup>16</sup> on "the practice of relying on older decisions

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<sup>14</sup> CA 81/71 (Trinidad and Tobago)

<sup>15</sup> HCA 858/73; Civil Appeal No. 78 of 1975 (Trinidad and Tobago), delivered April 16, 1980

<sup>16</sup> (2004) 64 WIR 378

and using an adjustment formula in arriving at an unlikely award..."<sup>17</sup> In the judgment delivered by Lord Carswell, the Committee opined:

"Their Lordships entertain some reservations about the usefulness of resort to awards of damages in cases decided a number of years ago, with the accompanying need to extrapolate the amounts awarded into modern values. It is an inexact science and one which should be exercised with some caution, the more so when it is important to ensure that in comparing awards of damages for physical injuries one is comparing like with like. The methodology of using comparisons is sound, but when they are of some antiquity such comparisons can do no more than demonstrate a trend in very rough and general terms."<sup>18</sup>

[43] The court bears in mind that in the instant case, in addition to and as a result of the injuries referred to above, the claimant's fistula (which is an absolute necessity for hemodialysis and, therefore, life) was damaged and he had to undergo further surgery to resite it. The fistula can now never be sited in the claimant's left hand due to the injuries sustained. The mental anguish and anxiety suffered by the claimant because of this have taken a great toll on his psyche.

[44] Mitchell J, in **Danny Bramble v William Danny Key Properties Limited**,<sup>19</sup> awarded the claimant \$50,000.00 for general damages where the accident caused severe whiplash which aggravated his pre-existing degenerative joint disease. His Lordship stated:

"The Defendants must take Mr Bramble as they found him. If their negligence aggravated his injury and pain (as it did) because his pre-existing condition made him more sensitive to injury, that is something for which they are responsible. I take in to account the nature and gravity of his resulting physical disabilities and the additional pain and suffering he has had to endure. It seems reasonable that some of his subsequent loss of amenities and loss of pecuniary prospects must have been due to the injuries he received. An amount of EC\$50,000.00 is not unreasonable."

[45] Similarly, the defendants in this case must take the claimant Annesley Roban as they found him. They are responsible for the aggravating situation surrounding the damage to the fistula, required for hemodialysis for his survival for his pre-existing condition of end stage renal failure.

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<sup>17</sup> See Rampersad, *ibid* at note 12, at paragraph 44

<sup>18</sup> *Ibid* at note 16, at page 385

<sup>19</sup> ANUHCv1999/0160, at paragraph 6, delivered January 15, 2004

[46] This is a case of severe injuries occasioned on the claimant, resulting in a drastic debilitating life transformation for him. Having considered the evidence and submissions with regard to comparable cases and bearing in mind inflationary trends, and with due caution about adjustment for older authorities, I am of the view that the proposed sum of EC\$225,000.00 is fair and just compensation for the claimant for pain and suffering and loss of amenities.

**Cost of future nursing/domestic care**

[47] It is evident that the claimant will need assistance for the rest of his life. Initial prognoses concluded that he had some grip in the left arm. This notwithstanding, from the date of the accident, he has had to rely on the assistance of his wife and other family members to accomplish the simplest of tasks. The updated medical report by Dr. Charles D. Woods, dated 12<sup>th</sup> May 2020, paints a much bleaker picture with the conclusion that the claimant's left arm will be permanently disabled.

[48] In assisting the court to arrive at an appropriate multiplier, the claimant cites **lcilda Osbourne v George Barned et al**,<sup>20</sup> a case involving a practical nurse employed at a Home for the Aged who was injured as a result of a motor vehicular accident when she a bus passenger. At the time of the assessment of damages, she was 60 years old. Her injuries cut short her career. Sykes J accepted the overall evidence that the claimant would need assistance for the rest of her life and determined that for damages for future nursing assistance, a multiplier of 8 was appropriate, given that life expectancy for a woman in Jamaica was approximately 72 years.

[49] I accept the clear evidence in the instant case that the claimant will need domestic assistance for the rest of his life. Given that the approximate male life expectancy in St. Vincent and the Grenadines is 70 years, and the claimant's current age of 56, he proposes a multiplier of 10. There is no evidence of a shorter life expectancy of the claimant in light of his diagnosis of end stage renal failure. Therefore, the proposed multiplier is not unreasonable and I shall apply it.

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<sup>20</sup> [2006] 2 JJC 1702, JM 2006 SC 19, Claim No. 2005 HCV 294 (Jamaica)

[50] Adopting the figure above under the head of special damages for nursing/domestic care of \$600.00 per month, this produces a multiplicand of \$6,000.00, which generates an award of \$60,000.00.

**Order**

[51] Based on the foregoing, the defendants are ordered to pay the claimant as follows:

- 1) Special damages in the sum of \$36,600.00
- 2) General damages for pain and suffering and loss of amenities in the sum of \$225,000.00
- 3) Future nursing/domestic care in the sum of \$60,000.00
- 4) Interest on special damages at the rate of 3 per cent per annum from the date of the accident to the date of judgment on assessment.
- 5) Interest on general damages for pain and suffering and loss of amenities at the rate of 6 per cent per annum from the date of service of the claim to the date of judgment on assessment.
- 6) Interest on the global sum of \$321,600.00 at the rate of 6 per cent per annum from the date of judgment on assessment to the date of payment in full.
- 7) Prescribed costs pursuant to CPR 65.5 in the sum of \$25,620.00.

[51] I am grateful to learned counsel for the claimant, Mr. Cummings, for his most useful submissions.

**Tamara Gill**  
Master

**By the Court**

**Registrar**