

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

(CIVIL)

CLAIM NO: ANUHCV 2003/0240

BETWEEN:

HAYDEN JAMES

Claimant

And

JUDY MC COY

Lawful Attorney of the Personal Representative of
NOEL BROWNE (also known as Noel Errol Cleofoster Browne), Deceased

Defendant

Appearances:

Ms. Mary B.E. White for the Claimant
Mr. Dane Hamilton for the Defendant

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2006: January 19, March 9
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JUDGMENT ON ASSESSMENT OF DAMAGES

- [1] **Thomas J:** The matter before the Court is the assessment of damages consequent on an Order by this said Court that there must be judgment for the Claimant.
- [2] The entire matter arose from a motor vehicle accident on 29th July, 2002 and involved vehicles driven by Noel Browne (now deceased) and the Claimant.
- [3] In an amended claim form filed on 11th July, 2003, the claim against the Defendant is for: damages for personal injuries, and loss and damage caused by the negligence of the

Defendant. The particulars of injuries as detailed in the Claimant's affidavit in support of assessment of damages are:

- "1. Considerable damage to tooth [sic] and jawbone from the impact of the Claimant's face with the steering wheel.
2. Orthodontic examination shows a crowded mandibular arch associated with relatively large pre-molars and molars in upper and lower jaws. A contributory factor is also the narrow arch width in the lower inter-molar dimension. This requires extensive treatment both locally and in the United States of America.
3. Comminuted fracture of left lower radius and styloid process of ulna with postero-lateral displacement comprising neuro-vascular status of left wrist and left hand.
4. Displaced fracture of right clavicle (middle 1/3).
5. Hairline undisplaced fracture of medial malleolus left foot.
6. Fascio-maxillary injuries for which he was treated by Dental Surgeons and was also examined by our Consultant ENT Surgeon.
7. Traumatic coxalgia."

- [4] Against these injuries, damages for pain and suffering and loss of amenity, future medical expenses and special damages are claimed. Affidavits are also filed in support of the assessment of damages in accordance with the Judgment Order.

GENERAL DAMAGES

- [5] In the celebrated case of *CORNILLIAC v ST. LOUIS*¹ it was held that in assessing general damages for personal injuries the considerations which ought properly to have been borne in mind are: (a) the nature and extent of the injuries sustained (b) the nature and gravity of the resulting physical disability (c) pain and suffering (d) loss of amenities (e) the extent to which pecuniary prospects were affected.

¹ (1965) 7 WIR 491

- [6] In the leading case of **ALPHONSO AND OTHERS v DEODAT RAMNATH**² Singh JA gave some indication as to the purpose of general damages. He described it as:

“[A] once-for-all and final settlement. It must take into account the many contingencies, vicissitudes and imponderables of life. It must remember that the plaintiff is getting a lump sum instead of several years and that the award is intended to compensate the plaintiff for the money he would have earned during his normal working life but for the accident”.

- [7] Learned counsel for the Defendant in his written submissions makes the point that the Courts in assessing general damages for personal injuries in effect concentrate on pain and suffering while at the same time considering the other factors. But, the import of the concept of 'pain and suffering' is not free from difficulty. A.I Ogus, **THE LAW OF DAMAGES** at page 198 make the point that pain and suffering can hardly be assessed on any scientific basis and further that there is no method of objectively assessing pain.

Nature and Extent of Injuries

- [8] In his medical report on Hayden James dated 17th September, 2002 by Dr. K.K. Singh, it is stated in part as follows:

“Hayden Adolphus James reported to the Emergency Rooms of Holberton Hospital on 29th July, 2002 when he was attended by our Casualty Medical Officer on duty with multiple injuries on account of Motor Vehicle Accident.

In examination of his skeleto-muscular system confined to his different extremities he had the following injuries:

1. Comminuted fracture of left lower and radius with styloid process of ulna with postero-lateral displacement compromising neuro-vascular status of left wrist and left hand.
2. Displaced fracture of right clavicle (midle 1/3).
3. Hairline undisplaced fracture of medial quiniform of left foot.
4. Fascio-maxillary injuries for which he was treated by

² (1997) 56 WIR 183

Dental Surgeons and was also examined by our ENT Surgeon.

5. Traumatic coxalgia.

Hayden James was shifted to the Operating Rooms on the same day where under general anesthesia Closed Reduction was performed by me to bring the fractures of lower end left radius and ulna to anatomical position for conservative healing under a POP cast below the elbow. He was also given a Zimmer Figure of 8 Collar Bone/Clavicle Brace along with a non-walking cast below the knee for his left foot fracture”.

- [9] From the dental perspective, a report dated 23rd August, 2003 by the Dental Practice Manager at Dr. Soumitra Sengupta's Clinic records the following:

“(1) Considerable damage to face jawbone from impact of the Claimant's face with the steering wheel.

(2) Orthodontic examination shows a crowded mandibular arch associated with relatively large pre-molars and molar in upper and lower jaw. A contributory factor is also the narrow arch width in the lower inter-molar dimension. This requires extensive treatment both locally and in the United States of America”.

Resulting Physical Disability

- [10] In his report dated 10th November, 2003 Dr. K.K. Singh had this to say:

“Lately I have seen Mr. Hayden James on 8th November, 2003 where he has recovered from most of his above diagnosed injuries as described in the report dated 17th September, 2002 but he is left with sequely and disabilities on account of restriction of movements in his left wrist and left ankle as follows:

1. LEFT WRIST

Clinical evaluation revealed that Mr. James has full range of wrist flexion, ulna and radial deviation but has ended up with 10 degrees of restriction of extension which contributes to 2% of permanent physical impairment in his upper extremity which contributes to 1% permanent physical impairment as a whole person (page 3/36 and 3/20 of Guides to the Evaluation of Permanent Impairment (Fourth Edition) of American Medical Association.

2. LEFT ANKLE

Mr. Hayden James has regained full planter extension, planter flexion and eversion in his left ankle but has restricted 10-15 degrees of inversion at his subtalon joint on account of fracture of left medial malleolus which contributes to 1% of permanent physical impairment as a whole person (page 3/78 Table 43) of Guides to the Evaluation of Permanent Impairment (Fourth Edition) of American Medical Association.

Mr. James remained disabled in the functions of both his upper extremities and left lower limbs including the fascio-maxillary functions from the date of the accident until 8th November, 2003 when he had ended up with 2% of permanent physical impairment in his upper extremity which contributes to 1% of permanent physical impairment as a whole man. Together with his lower limb disabilities he is 2% permanently disabled as a whole man along with the disabilities, which need to be evaluated by the fascio-maxillary surgeon treating Mr. James at present."

PAIN AND SUFFERING

[11] Under this head damages may be awarded for past and future pain and suffering attributable to the injury and to any consequential operations. These damages are assessed subjectively. However the Claimant must actually experience pain and suffering in order that damages may be awarded. Thus in **WISE v. KAY**³ it was held by the House of Lords that damages were not recoverable for a period during which the Claimant was unconscious or incapable of experiencing pain and suffering.

[12] While there is no direct evidence of pain and suffering, the nature and extent of the Claimant's injuries were given in evidence by Dr. Singh and Dr. Sengupta. In brief they relate to the mouth, clavicle left hand and wrist and left ankle.

SUBMISSIONS

[13] On behalf of the Claimant the following are the comments on the evidence and submissions:

³ [1962] AC 326

1. In terms of the nature and extent of the injuries suffered and the nature and gravity of the resulting physical disability, reference is made to the reports of Dr. K.K. Singh and Dr. Soumitra Sengupta and the injuries noted therein.
2. Pain and suffering: While it is submitted that no evidence has been adduced to say that the Claimant bawled and wailed from writhing in pain from the date of the accident to any particular period, again, the nature and extent of the injuries sustained and the complexity of the reconstructive surgeries together with extensive nursing care reportedly received, all lead to the request for judicial notice to be taken that indeed pain and suffering must have been concomittant with the injuries.
3. Loss of Amenities: Reference is made to paragraph 33 of the Claimant's affidavit where he deposes that: "As a result of the extensive grafting in my mouth, there is a lisping in my speech. Further gum surgery is recommended to correct my lisping in my speech as a result of soft tissue loss resulting from the accident.
4. The Claimant is a young man who, until surgery is performed must go through his daily routine with a lisp which would draw unusual and unwanted attention to himself. While no monetary value can be placed on his surgery to correct the lisping problem, an amount identified at a later date as such future medical expenses can be ordered to be taxed. This is the position in the Privy Council decision in **SELVANAGAN v. UWI (1983) 34 WIR 274**.

[14] Learned counsel for the Defendant makes the following observations and submissions:

1. The injuries to the Claimant suffered resulted in a 1% permanent physical impairment as a whole person and he may suffer in the future degenerative joint disease.
2. The full extent of the fascio-maxillary injuries are not known.
3. There is no evidence as to the pain and suffering endured by the Claimant during the period of his disability and his subsequent rehabilitation.
4. Under the head of loss of amenities the Claimant's loss is minimal. He was twenty-three years old at the time and he has fully recovered with minimal physical impairment.
5. There is no evidence that he has suffered or will suffer loss of employment prospects. Indeed his employment has continued with his pre-accident employers.

6. Damages in respect of the Claimant's injuries felt to be considered only under three heads: nature and extent of the injuries sustained, nature and gravity of the resulting physical disability and pain and suffering.

THE CLAIMANT

- [15] It is common ground that the Claimant was born on 3rd May, 1979 and that on 29th July, 2002 the Claimant was 23 years of age. He lived with his parents at Clarke's Hill and was employed at Cingular Wireless as a junior technician.
- [16] In his affidavit in support, filed on 6th May 2005, the Claimant details his activities outside of work to include beach volley ball, attendance at the gym and painting. It is to be noted that in his passport his profession is listed as 'Artist'.

PRIOR AWARDS

- [17] Given the nature and extent of the injuries sustained by the Claimant, it goes without saying that the prior awards must be comparable.
- [18] Learned counsel on both sides referred the Court to a number of prior awards from Caribbean and English jurisdictions which the Court has reviewed.
- [19] Selecting those authorities which are close to the present injuries sustained by the Claimant, the following is a summary of the authorities cited:
- [20] In **RAMSARAN v. BABOOLAL**⁴ Mc Millan J on 24th July, 1979 an award of \$12,500.00 was made for fracture of collar bone and ribs resulting in loss of movement and various other injuries. In November 1994 this award was adjusted to \$56,327.00.
- [21] In **SEERATTAN v. ARCKBARACI**⁵ Maharaj J on 29th January 1976 awarded \$5000.00 for pain and suffering and loss of amenities for a fracture ankle. This was adjusted to \$33,785.00 in 1994.

⁴ No. 566/1997

- [22] In **SUDAMA v. BALDEOSINGH**⁶ Bernard J on 23rd May, 1979 made an award of \$12,000.00 for pain and suffering and loss of amenities with respect to the fracture of several facial bones which malamuted, fracture of the collar bone (clavicle) fracture of upper and lower jaw partial amputation of right index finger, difficulty in opening and closing mouth. This amount was adjusted in 1994 to \$57,246.00.
- [23] According to learned counsel for the Claimant, the present case falls somewhere between the cases cited above. An amount of US\$40,000.00 would reflect the reasonably adjusted figure for pain and suffering and loss of amenities.
- [24] Based on **KEMP & KEMP – The Quantum of Damages** Vol. 11 at para. 1998, learned counsel for the Defendant submits that the award for jaw and teeth range between £3000 and £7000. And with respect to wrist the damages awarded by UK Courts range from £3000 to £5000. It is pointed out that the injury suffered by the Claimant to his ankle was a hairline fracture which is at the lower end of the scale.
- [25] Learned counsel concludes his submission in this manner: “On a whole, for the injuries to his clavicle, wrist and ankle given the recovery made by the Claimant and the small residual effects, which I submit is less than 1% I submit that an award of EC\$75,000 is appropriate being within a generous ambit”.
- [26] While the prior awards provide some guidance, they are never exactly on point in terms of the combination of the injuries involved. Thus a measure of arbitrariness or rough estimation cannot be avoided. The difficulty is well summarized by Lord Carswell giving the judgment of the Privy Council in **SEEPERSAD v. PERSAD AND ANOR** (2004) UK PC at para. 15:

“Their Lordships entertain some reservation 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 award of damages for physical

⁵ No. 2019/1975

⁶ No. 621/1973

injuries one is comparing like with like. The methodology of using comparisons is sound, but when they are of some antiquity such comparison can do no more than demonstrate trend in very rough and general terms".

- [27] The case of **RAJA MANSOOR v. JERON DANIEL and HULESTER SMITTEN**⁷ must be brought into the general damages equation. This case bears substantial resemblance to the present case in terms of damage to teeth and gum when her mouth collided with the steering wheel of her vehicle after it was hit from behind while at a standstill. The dental treatment necessary was unavailable in Antigua and had to be obtained in Puerto Rico. This treatment included: three missing teeth, three-unit acrylic flippers, three root canals and fitting of crown of porcelain fused to metal. The treatment also involved the removal of alveolar fragments in the interior and stitches administered, extraction of three teeth, temporary replacement of teeth by an acrylic partial denture, which was not tolerated, loss of three lower incisor teeth which necessitated implants and root canal therapy.
- [28] Upon a review of numerous cases damage to teeth and jaw, the sum of \$40,000.00 was awarded plus \$20,000.00 for loss of amenities.
- [29] Learned counsel for the Defendant has made the point that there is no indication in the pleadings as to the extent of the pain and suffering, if any, endured by the Claimant. This cannot be an impediment to the award of the appropriate or reasonable damages. It may be that injury is followed by pain and suffering. And on this account **MCGREGOR ON DAMAGES** (15th ed.) at para. 1517 casts some light on the issue:

"It has been suggested that pain is the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while suffering is distress which is not felt as being directly connected with any bodily condition. On this analysis pain needs no further elucidation, it may be noted that it will include, for the purposes of damages, any pain caused by medical treatment or surgical operation rendered necessary by the injury inflicted by the defendant. As to suffering, this would seem to include fright reaction, fear of future incapacity, either as to health, sanity or the ability to make a living and humiliation, sadness and embarrassment caused by disfigurement".

⁷ Claim No. ANUHCV 2000/0121

- [30] The **MANSOOR** case is therefore a starting point. It is a starting point because the Claimant in this case also had a fractured clavicle, and wrist and hairline fracture of his left ankle. All things considered, an award of \$60,000.00 is given.

LOSS OF AMENITIES

- [31] The purpose of an award for loss of amenities is to compensate the Claimant for the physical disability sustained as a result of the accident and the effect of that disability on his or her enjoyment of life.
- [32] Dr. Singh's evidence as noted before, is to the effect that as a result of the injuries the Claimant is 2% permanently disabled as a whole man along with disabilities which need to be evaluated by the fascio-maxillary surgeon treating him. There is no such evaluation before the Court but in his affidavit in support the claimant details the activities which are either curtailed or eliminated. They include playing beach volley ball, going to the gym. Added to this is the lisp resulting from the extensive grafting in the mouth.
- [33] Having regard to the law, the prior awards and the disabilities, an award of \$25,000.00 is made for loss of amenities. It is to be noted that the age of the Claimant is a serious factor in the circumstances since the younger he is the longer he will have to endure the disabilities.

FUTURE MEDICAL CARE

- [34] The evidence is that future medical care would be required to correct the lisp plus the onset of the increase of permanent physical impairment as the Claimant grows older on account of developing further **post traumatic degenerative joint disease** thereby increasing his percentage of permanent physical impairment.
- [35] There is no evidence as to what such care is likely to be. However, in the view of the Court this is a case where an award should be made based on the evidence. In the absence of such evidence a nominal award of \$10,000.00 is made under this head. In this

regard reliance is placed on a dictum of Barrow J (as he then was) in *CYPRUS CLAXTON v. CEDRICK DAWSON*, *supra*, at para. 75:

"Nominal damages is used in two senses. It is more commonly understood to mean a token amount, such as one dollar. However, it also means an amount that may be awarded when the fact of a loss is shown but the necessary evidence as to its amount is not given. In such a situation the Privy Council has stated that though the loss may be unquantified it is the duty of the Court to recognize the loss by an award that is not out of scale see: *GREER v. ALSTONS ENGINEERING SALES AND SERVICES LTD* [2003] UK PC at paragraph 9.

SPECIAL DAMAGES

- [36] A summary of the special damages now claimed is as follows: property \$19,045.00; medical expenses \$74,788.00; nursing care \$39,780.00; air travel \$4,146.10; Miami residency expenses \$10,395.00; communication \$450.00; transportation in Antigua and Barbuda to and from work (7 weeks) (\$200.00) \$1400.00: total \$156,899.00.
- [37] The general and well established rule regarding special damages is that they must be specially pleaded and proved, see: *ILKIW v. SAMUELS ET AL* (1963) 2 ALL ER 879,890 per Diplock LJ (as he then was). However in the case of *GRANT v. MOTILAL MOONAN AND ANR*⁸ the Court of Appeal of Trinidad and Tobago held that the sufficiency of proof of special damages must depend on the particular circumstances of the case and that the absence of receipts only goes to the credibility of the Claimant. Specifically the items in issue in that case were used household furniture that were damaged or destroyed as a result of a vehicular accident⁹.

⁸ (1968) 43 WIR 372

⁹ This latter decision was followed by this Court in the case of *LIVERSON SANDY v. APUA* Civil Suit No: ANUHCv 1998/156 per Mitchell J and *SUSAN NORMAN v. FRANKLYN REYNOLDS* trading as *FRANCO'S CALYPSO & GLASS BOTTOM BOAT* Civil Suit No. 307/2001 per Joseph-Olivetti J.

Property

- [38] The items of property claimed under this head are a 1993 Honda Integra motor car, shirt tie and trousers with values of \$20,000.00, \$120.00, \$210.00 and trousers \$185.00; respectively.
- [39] The value of \$20,000.00 with respect to the car is supported evidence of Robert Gordon (CB p.101) and is not challenged by learned counsel for the Defendant. Therefore that value less the salvage value of the wreck of \$1500.00 plus \$400.00 for the other items yield a total of \$18,900.00.

Medical Expenses (Dr. Singh)

- [40] As noted above, Dr. Singh in his report dated 17th September, 2002 detailed the injuries suffered by the Claimant and the manner in which they were treated.
- [41] With respect to professional services rendered to the Claimant by Dr. Singh the amount of \$1,850.00 is claimed. This is supported by a detailed bill (exhibited) with Dr. Singh's affidavit in support of assessment of damages) and which also shows that a total of \$1,850.00 was paid. There are no objections to this amount claimed and as such is allowed.

Dental Services (Antigua)

- [42] In his witness statement filed on 31st October, 2003 exhibited with his affidavit in support of assessment, Dr. Soumitra Sengupta deposes that:

"On the 21st August 2002 Mr. James presented himself at the Dental Practice of dr. Sengupta and Associates – Dental Surgeons. On examination there were two missing upper central incisors as a result of a car accident. His face impacted with the steering wheel resulting in considerable tooth and jawbone damage. Further I recommend that Mr. Hayden James attend the Health South Doctor's Hospital in Coral Gables, Florida, and in particular Dr. Anthony Sclar Surgeon for professional management for the Jaw Grafting treatment. We at Dr. Sengupta & Associates are carrying out the

necessary specialist Orthodontic Treatment".

- [43] The cost associated with the treatment rendered by Dr. Sengupta is evidenced by a document (SS5) exhibited with his affidavit aforesaid and which shows a total of \$15,995.00.
- [44] In cross-examination in Court Dr. Sengupta testified that with respect to the Claimant's upper jaw he replaced a couple of missing teeth with porcelain bounded to precious metal crowns at a cost of \$7,000.00 each. In the circumstances this amount of \$15,995.00 is allowed.

Dental Services (Miami)

- [45] In connection with dental services in Miami the Claimant in his affidavit of 6th May, 2005 deposes as follows:

- "16. I further sought orthodontic (medical) attention from Dr. Soumitra Sengupta also of Woods Centre (Please see exhibit attached hereto and marked "HJ8").
17. In the latter connection, because of the gravity of the injury to my lower jaw bone and the manner in which my two front teeth were lost Dr. Sengupta recommended me to a co-operating specialist overseas in Miami ... for extensive related constructive program.
18. Six weeks after been discharged ... I left for Miami, Florida where for one month I was attended by Dr. Anthony G. Selar, CMD Surgeon at health South Doctor's Hospital Coral Gables Florida".

- [46] In cross-examination by learned counsel for the Defendant, the Claimant confirmed that he went away to see Dr. Sclar in relation to his upper jaw because such treatment as required was not available in Antigua and Barbuda. He said further the final phase of his dental treatment lasted four to six weeks. He was not cross-examined on the expenditure involved.

- [47] The "Operative Report" from the Health South Doctor's Hospital indicates that the operation in relation to "JAMES, HAYDEN 100446703" was "Bone Graft reconstruction of anterior maxillo with iliac bone harvest on the right side".
- [48] The amount claimed for the dental services in Miami is \$56,943.00 which is US\$21,090.00. This latter amount is reflected on the Ledger Itemized View Report from South Florida OMS.
- [49] In all the circumstances the court accepts that the sum of \$56,943.00 was spent by the Claimant for dental treatment in Miami and is allowed.

Nursing Services

- [50] The amount of \$39,780.00 is claimed under this sub-head and relates to care provided by the Claimant's parents.
- [51] Learned counsel for the Defendant notes that this amount relates to the period of the Claimant's recovery at home. His submission continues thus:

"They assisted in helping him bathe, eat, visit to the bathroom as he was mostly confined to bed. No mention is made of the need to provide nursing care for the dressing of wounds or injuries, the provision of medication at the prescribed times or indeed is any individual recommendation provided requiring the provision of nursing services to the Claimant for any defined period. It is submitted that what in fact is being claimed for is family help afforded to the Claimant during a period of incapacity or partial incapacity. It is itemized in number of days such as 42 days 24 hour care and a figure of \$8,190.00 is claimed for each of his parents. A total of 166 days is claimed at a figure ranging from \$300.00 per day to 4130.00 per day. It is submitted that under this heading, the Court is entitled to award only what is fair and reasonable on the evidence given in this case. This claim is inflated both as to persons and time and the amounts".

- [52] In cross-examination by learned counsel for the Defendant Adolphus James and Mabel James maintained that they provided the nursing care in terms of the claim AJ & MJ2.

[53] It is Adolphus James' evidence that the care started after his son was discharged from the hospital and continued for forty-two days and further that his son was immobilized for the whole of August and part of September 2002 and that during this time he and his wife provided services at times on a 24 hour basis.

[54] The joint claim for nursing services is in the following terms:

"This is to certify that we the undersigned natural parents of Hayden James provided patient care for the said Hayden James for the period July 29, 2003 until January 10, 2003. The following is a breakdown of the charges:

42 days 24 - hour care @ \$390.00	= \$16,380.00
56 days 16 - hour care @ \$260.00	= \$ 14,560.00
26 days 8 - hour care @ \$130.00	= \$ 3,380.00
42 days 8 - hour care @ \$130.00	= \$ 5,460.00
TOTAL:	<u>\$39,780.00</u> =====

[55] One of the leading cases respecting nursing care as a head of special damages is **DONNELLY v. JOYCE**¹⁰. The head note is in the following terms:

"In an action for damages for personal injuries in an accident, a plaintiff was entitled to claim damages in respect of services provided by a third party which is reasonably required by the plaintiff because of his physical needs directly attributable to the accident; the question whether the plaintiff was under a moral or contractual obligation to pay a third party for the services provided was irrelevant; the plaintiff's loss was the need for services, the value of which, for the purpose of ascertaining the amount of his loss, was the proper and reasonable cost of supplying the plaintiff's need. It followed, therefore that the defendant was liable to the plaintiff for the cost of the mother's services, i.e. her loss of wages, necessitated by the defendant's wrongdoing..."

[56] Commenting of the above mentioned case in the British Virgin Islands case of **CYRUS CLAXTON v. CEDRIC DAWSON**¹¹ Barrow J, as he then was, had this to say:

¹⁰ (1973) 3 ALL ER 475

¹¹ BVI HCV 2002/0180

"Donnelley v. Joyce was the turning point in English law on the recoverability for care and services provided gratuitously by relatives or other third parties. Subsequent decisions of the English courts confirm that the law in this regard is now well set. In my judgment the position in English law should be followed by this Court as producing a just result and therefore I reject the defendant's challenge to the items of special damage that fall within this class".

- [57] Entitlement to damages under this head is therefore not an issue. The issue is the reasonableness of the claim.
- [58] As indicated above, learned counsel for the Defendant in his elaborate submission has challenged the main one being that it is inflated both in terms of the duration and the daily rates for the services. The Court agrees.
- [59] Therefore the claim submitted is rejected in its present form for the following reasons:
1. Adolphus and Mabel James contradict each other with regard to whether or not the former was on vacation when the services were provided.
 2. The sheer physical impossibility of providing 24 hour service for several days. Also the impossibility of providing 24 hours service while being at work during the day.
 3. There is no evidence to suggest that 24 hour service was required.
 4. The 168 days of the service even covers the period when the Claimant was hospitalized and when there would be nurses on duty. This was modified in cross-examination.
 5. The 168 days claimed also covers period when the Claimant was in Miami receiving treatment during September and October 2002.
 6. No basis, if one does exist, was given in evidence for the rates for non-professional services ranging from \$390.00 to \$260.00 to \$130.00 per day.
 7. The quantum embodied in the claim suffers from a serious bout of myopia.
 8. All notions of reasonableness vanished when the claim was being formulated.

- [60] The unchallenged evidence of Adolphus James is that his son was hospitalized on 27th July, 2002 for nine days. This means that he spent from 5th August, 2002 at his home. This is the earlier date on which the services could reasonably be approved. Further the South Florida OMS Ledger Itemized View report indicates that the Claimant was receiving treatment during the following periods: September 2002 – 2 days, October 2002 – 4 days, January 2003 – 3 days, February 2003 – 6 days, March 2003 – 1 day, July 2003 – 7 days, September 2003 – 1 day and December 2003 – 3 days.
- [61] It means therefore that the nine days of hospitalization in Antigua and the six days in September and October 2002 must be deducted from the total of 168 days claimed. This leaves a total of 153 days. But this must be further reduced in view of Adolphus James' evidence in cross-examination that after 42 days the Claimant was moving around and that he was using a wheel chair when he went to Miami. In the circumstances a further 30 days will be allowed to give a total of 72 days of service.
- [62] In all the circumstances the Court considers a rate of 450.00 per day is reasonable given the fact that it was cooking meals (which had to be done anyway) feeding, bathing, dressing and lifting the Claimant. This yields a total of \$3600.00.

AIR TRAVEL

- [63] Exhibits 20 and 21 relate to two airline tickets in the names of Hayden James and Adolphus James. They are return tickets to Miami in the amount of \$1,293.40 each.
- [64] A question arises in relation to the latter ticket but the Court takes the view that since at the time the Claimant was in a wheelchair and was in transit in Puerto Rico and that assistance would be required in such circumstances and as such the amount is allowed.
- [65] Also in evidence is another travel document which bears a ticket number in relation to American Airlines. It relates to the Claimant's travel to Miami on 29th January, 2003 and return on 15th February, 2003. The amount is \$1,559.30. This will also be allowed since it

coincides with a period when the Claimant was receiving dental treatment. Therefore, the total allowed under this head is \$4,146.00 as being a reasonable and consequential expense.

Miami Accommodation & Transport

- [66] The evidence is that the Claimant received dental treatment in Miami at various times between September 2002 and December 2003. In fact a "To Whom It May Concern" document dated July 22, 2003 from South Florida OMS (TB p. 138) indicates in part as follows:

"We have surgery planned for Thursday July 24, 2003 at 11:00 am. We request the patient stay in town for at least 5-7 days following the procedure to ensure appropriate recovery and be seen by Dr. Sclar for at least one post-operative appointment".

- [67] The claim is transportation and board for a total of ten weeks at a cost of US\$385.00. For transportation and board this works out to be US\$55.00 per day. The Court considers this amount to be reasonable and the amount of US\$3 850.00 or EC\$10,395.00 is allowed as it falls within the rule in *DONNELLEY v. JOYCE, supra*.

Transportation Costs

- [68] The claim under this head is for \$1,400.00 for a period of seven weeks provided to the Claimant by his father to and from work.
- [69] It is the contention of learned counsel for the Defendant that this head is not strictly proved. This is correct to a point but the point is that the Claimant had only recently recovered from serious injury to his ankle, wrist, clavicle of this nature would not be unreasonable. In the circumstances the Court will grant the nominal sum of \$750.00

Communications

- [70] The sum of \$450.00 is claimed under this head. There is no evidence as to the nature and extent of the communications. However, given the period the Claimant spent in Miami and

the fact that he was there for specialist dental treatment render the claim reasonable in the circumstances, see: **GRANT v. MOTILAL MOONAN AND ANR**, *supra*.

SUMMARY OF AWARDS

General Damages

Pain and Suffering	\$60,000.00
Loss of Amenities	\$25,000.00
Future Medical Care	\$10,000.00
TOTAL GENERAL DAMAGES	\$95,000.00

Special Damages

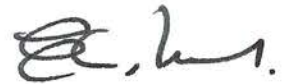
Property	\$ 18,900.00
Medical Services	\$ 1,850.00
Dental Services (Antigua)	\$ 15,995.00
Dental Services (Miami)	\$ 56,943.00
Nursing Services	\$ 3,600.00
Air Travel	\$ 4,146.00
Miami Accommodation and Transport	\$ 10,395.00
Transportation (Local)	\$ 750.00
Communications	\$ 450.00
TOTAL SPECIAL DAMAGES	\$113,029.00

ORDER

[71] **IT IS HEREBY ORDERED** that judgment on the assessment shall be as follows:

1. General Damages in the amount of \$95,000.00.
2. Special Damages in the amount of \$113,029.00.
3. Interest on the general damages, except damages for future medical care of \$85,000.00 at the rate of 5% per annum from the date of the filing of the claim, being 14th May 2003, to the date of the judgment on assessment, being 9th March, 2006.

4. Interest on damages of \$10,000.00 for future medical care at the rate of 5% from the date of the judgment on assessment, being 9th March, 2006 until payment.
5. Interest on the special damages of \$113,029.00 at the rate of 2.5% per annum from the date of the accident, being 29th July, 2002 to the date of the judgment on assessment, being 9th March, 2006.
6. Prescribed costs in accordance with Part 65.5 of CPR 2000.



ERROL L. THOMAS
High Court Judge



IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2003/0240

HAYDEN JAMES

- Claimant

AND

JUDY McCOY

*Lawful Attorney of the Personal Representative
Of NOEL BROWNE (also known as Noel Cleofoster Browne)
DECEASED*

- Defendant

AMENDED DRAFT ORDER

BEFORE THE HONOURABLE JUSTICE ERROL L. THOMAS
(In Chambers)

DATED The 9th day of March 2006.

ENTERED The day of 2006.

UPON HEARING MARY B. E. WHITE Counsel for the Claimant herein AND DANE
HAMILTON of MESSRS HAMILTON AND ASSOCIATES appearing for the
Defendant

IT IS ORDERED that judgement on the assessment shall be as follows: -

1. General Damages in the amount of \$95,000.00.
2. Special Damages in the amount of \$113,029.00.
3. Interest on General Damages, except damages for future medical care of
\$85,000.00 at the rate of 5% per annum from the date of the filing of the claim,

*Signed
ERL
2 May 2006*

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2003/0240



HAYDEN JAMES

- Claimant

AND

JUDY McCOY

*Lawful Attorney of the Personal Representative
Of NOEL BROWNE (also known as Noel Cleofoster Browne)*
DECEASED

- Defendant

ORDER

BEFORE THE HONOURABLE JUSTICE ERROL L. THOMAS
(In Chambers)

DATED The 9th day of March 2006.

ENTERED The 5th day of May 2006.

UPON HEARING MARY B. E. WHITE Counsel for the Claimant herein AND DANE HAMILTON of MESSRS HAMILTON AND ASSOCIATES appearing for the Defendant

IT IS ORDERED that judgement on the assessment shall be as follows: -

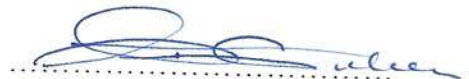
1. General Damages in the amount of \$95,000.00.
2. Special Damages in the amount of \$113,029.00.
3. Interest on General Damages, except damages for future medical care of \$85,000.00 at the rate of 5% per annum from the date of the filing of the claim,



being 14th May 2003, to the date of the judgement on assessment, being 9th March 2006. The said Interest on General Damages being \$11,996.30.

4. Interest on Damages of \$10,000.00 for future medical care at the rate of 5% from the date of the judgement on assessment, being 9th March 2006 until payment.
5. Interest on the Special Damages of \$113,029.00 at the rate of 2.5% per annum from the date of the accident, being 29th July 2002 to the date of the judgement on assessment, being 9th March 2006. The said Interest on Special Damages being \$10,216.80.
6. Prescribed costs in accordance with Part 65.5 of CPR2000. The said Prescribed costs being \$34,536.30.

BY THE COURT



REGISTRAR