

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2012/0120

BETWEEN:

SHELLENE MC NEIL

Claimant

and

CLIFFORD YOUNG

First Defendant

JERRY LEWIS

Second Defendant

Appearances:

Mr. Roderick Jones for the Claimant

Mr. Duane Daniel and Ms. Jenell Gibson for the First Defendant

Ms. Lakita Rochel John holding for Mr. Richard Williams for the Second Defendant

2021: May 4
June 8

JUDGMENT ON ASSESSMENT OF DAMAGES

[1] **GILL, M.:** This assessment is as a result of a claim in negligence filed on 11th April 2012 by the claimant who sustained an injury in an accident at sea. The claimant, Shellene McNeil, claims against the Defendants, Clifford Young and Jerry Lewis, the following relief:

- 1) Special damages in the sum of \$3142.00
- 2) General damages
- 3) Interest
- 4) Costs
- 5) Further or other relief as the court deems necessary or appropriate.

Background

- [2] On 12th April 2009, the claimant was a passenger on a motor vessel driven by the 1st defendant travelling from Bequia to St. Vincent. That motor vessel collided with another motor vessel driven by the 2nd defendant. As a result of the collision at sea, the claimant suffered a major laceration to her right leg. She was hospitalised for three days and then she proceeded on extended sick leave from her job as an office attendant.
- [3] The claimant was later diagnosed with deep vein thrombosis consequent to the injury and, in September 2019, she was recommended for retirement by one of her doctors. She was born on 11th January 1976 and therefore, 33 years old at the time of the accident, and 43 at the time of her early retirement on medical grounds in October 2019.
- [4] However, the latest medical report of March 2020, submitted by a doctor agreed to by the parties, states that he sees “no reason why she cannot continue to work, as long as her relatively mild physical limitations are taken into consideration”.
- [5] On 9th August 2019, having referred the matter to a referee to give clarity on the applicable maritime law, the court determined the matter in favour of the claimant, attributing full liability to the 1st and 2nd defendants in the proportion of 70% and 30% respectively. The matter was then listed for assessment to determine quantum. The 2nd defendant did not take any active part in these proceedings and relies on the submissions of the 1st defendant.

Issue

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

Special damages

- [7] As pleaded, the claimant claims special damages in the sum of \$3142.00 broken down as follows:
- | | |
|--|-----------|
| (a) Transportation costs | \$125.00 |
| (b) Medical costs | \$917.00 |
| (c) Nursing care (6 months @ \$350.00 per month) | \$2100.00 |

[8] In submissions, the claimant seeks special damages totaling \$2553.75 broken down as follows:

(a) Physiotherapy (\$15.00 x 9)	\$135.00
(b) Medical reports	\$250.00
(c) Home care	\$2100.00
(d) Medication	\$68.75

[9] The fundamental rule is that special damages must be pleaded, particularised and proved.¹ In **Dave Anthony v Raymond Yhap and Chan Yhap**,² Master Drysdale, as she then was, stated:

“In order for special damages to be recoverable the Claimant must not only particularise the same but must demonstrate that these expenses have been incurred. A receipt is accepted universally as a clear and unmistakable method of demonstrating payment and for that reason the courts have traditionally insisted on the production of same.”

[10] Learned counsel for the 1st defendant, Ms. Gibson, submits that the claimant has proved special damages amounting to \$2143.00 only, being \$2100.00 for home care as evidenced by a letter of the caregiver exhibited to the witness statement of the claimant filed on 30th July 2020, and an invoice for medication in the sum of \$43.00. Counsel pointed out that the claimant has not adduced evidence that proves transportation costs of \$125.00, medical costs of \$917.00 (which are specifically pleaded), physiotherapy costs of \$135.00, medical reports costs of \$250.00 or medication in the sum of \$68.75.

[11] Learned counsel for the claimant, Mr. Jones, acknowledges that these items of special damages are not proved but asks the court to exercise its discretion and award nominal damages for loss pleaded, as did the court in **Brentlie Charles aka Brentley Charles v Marcus Corridon**³ in making an award for pre-trial loss of earnings unsubstantiated by evidence.

Transportation costs

[12] The claimant filed three witness statements for this assessment. Whereas she pleads transportation costs of \$125.00, there is no mention in any of these statements of her being transported in respect of anything to do with this matter or at all, or any transportation costs she

¹ As per Lord Diplock in *Ilkiw v Samuels and Others* [1963] 2 All ER 879 at 890

² ANUHCv2017/0030 at paragraph 11

³ SVGHCv2002/0506

incurred. It would be improper for the court to speculate into the evidence that the claimant must have had to pay to be carried to and from medical appointments. It may well be that she was assisted in this way free of cost by family and friends. There is nothing at all in the evidence for the court to find that the claimant incurred transportation costs. Therefore, special damages under this head are disallowed.

Physiotherapy costs

- [13] Although this is not specifically pleaded, it can be argued that it falls under the general head of medical costs. Again, nowhere in the claimant's witness statements does she say that she underwent any form of physiotherapy. These costs are also disallowed.

[14] Medical costs and medical reports

There are at least three medical reports prepared by different medical doctors in evidence. It is also clear that the claimant received medical attention and treatment on numerous occasions in relation to her injury. However, she has not provided the court with evidence of payment for any of this. It appears that much of her medical care involved State facilities, with at least one visit to a private practitioner. With no receipts to demonstrate medical costs, and without an indication from the claimant that she paid for, or was required to pay for, any medical services or reports, the court will not award special damages in this regard. This is not simply a case in which the claimant is seeking damages that have not been substantiated by receipts. She has not stated in her evidence that she incurred these expenses. There is no evidence of loss to substantiate an award of nominal damages for medical expenses in this matter.

Special damages award

- [15] In the circumstances, I agree with learned counsel for the 1st defendant that the claimant should be awarded only the sum claimed for nursing/home care and the sum of \$43.00 for medication. Accordingly, I award special damages in the sum of \$2143.00.

General damages

- [16] The well-established principles to be considered in determining general damages in personal injury cases were laid down by Wooding CJ in **Cornilliac v St. Louis**.⁴ The main factors to be taken into account are (i) the nature and extent of the injuries sustained; (ii) the nature and gravity

⁴ (1965) 7 WIR 491

of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities; and (v) the extent to which pecuniary prospects are affected. The claimant seeks general damages for pain and suffering, loss of amenities, loss of future earnings and future medical care.

The nature and extent of the injury sustained

- [17] The medical report of Dr. Logendraraj Selvarajah, general surgeon, dated 5th April 2011 reveals that the claimant was seen at the Accident and Emergency Department of the Milton Cato Memorial Hospital on the day of the accident, 12th April 2009. She sustained a deep laceration, 15cm in length, to her right thigh. The doctor noted that her mucous membranes were pink and moist, and muscles were exposed. There were foreign particles like paint and sand in the wound. Bone was not exposed and minimal bleeding was seen. She was taken to the operating theatre for wound debridement. The wound was cleaned and foreign particles were removed as much as possible. She was then transferred to the female surgical ward and treated there for 3 days. She was discharged with medication and referred to the surgical outpatient clinic.

The nature and gravity of the resulting physical disability

- [18] In a subsequent undated report, Dr. Selvarajah described the injury as a very bad deep laceration for which the claimant underwent many surgical procedures as debridement and wound management. He informed that she developed various complications during the wound healing process. He reported that the claimant visited his office on 2nd April 2019 and had restricted range of movement in her right knee when compared with the left. She had difficulty during flexion of her right knee. There was tenderness over the scar site. Her gait was remarkably affected and limping was noted.
- [19] Dr. Junior Ackie, general practitioner, in a medical report dated 5th September 2019, diagnosed the claimant with deep vein thrombosis secondary to complications of the boat injury. She was managed with medication and placed on sick leave.
- [20] The latest medical report is that of Dr. Charles Woods, orthopaedic surgeon, dated 9th March 2020. As mentioned earlier, the parties agreed that the claimant be examined by Dr. Woods. His report is put in evidence on behalf of the 1st defendant. Dr. Woods reported that the claimant was fully ambulant without support. The report states:

“On examination there was a large scar to the lateral right thigh, which was sensitive to touch, but well healed. The right thigh had significant muscle wasting and there was some weakness in extension of the right knee. There was good range of motion of both the right knee and ankle. There was no significant tenderness or deformity of the ankle or foot.”

Dr. Woods went on:

“Ms. McNeil has much muscle wasting of the right thigh as a result of her injury, which I think is a result of the lack of physiotherapy during her recuperative phase. This is also causing the limitation of extension of her knee. There is no evident intra-articular injury of the knee or ankle.”

He described the claimant's condition as a mild disability at that time.

- [21] The claimant's evidence, up to her last witness statement filed on 30th July 2020, is that she walks with a limp and she is unable to sit or lie for long periods without experiencing discomfort. During the assessment hearing, conducted by Zoom, Counsel Mr. Jones requested the court's permission (which was granted) for the claimant, who was sitting in his chambers, to stand in order to relieve her distress.

The pain and suffering endured

- [22] The claimant avers that since the accident, she has been in constant discomfort and periodical pain, which gets worse at night, particularly when it rains. At the time of the accident, she was employed with The Guyana and Trinidad Mutual Life Insurance Company Limited (GTM) as an office attendant. She states that when she returned to work after her sick leave, she was unable to perform her duties given that the bulk of those duties involved running errands for the office, and the severe injury to her thigh made brisk walking or any prolonged walking extremely difficult. She says that she also encounters great difficulty climbing steps and bending down has become very painful. She states that her walking has become very ungainly and lethargic.
- [23] She maintains that the pain she has suffered since the accident has intensified over time and that in February 2020, Dr. Perry DeFreitas prescribed pain management medication for her. At the hearing, there was much contention on this issue. Learned counsel for the 1st defendant, Mr. Daniel, pointed out to the court that the document exhibited by the claimant as a prescription was, in fact, an invoice for Aspercreme. Counsel was adamant that the claimant has not produced any prescription for pain medication. I observe that there is no report from Dr. DeFreitas in evidence.

Further, Mr. Daniel argued that in the latest report of Dr. Woods of 9th March 2020, the doctor did not include that the claimant was given a prescription for any pain medication, and asked the court to conclude that that the doctor did not find it necessary to prescribe such. Counsel, in effect, is asking the court to downplay the pain and suffering the claimant says she experienced, and continues to endure, because there is no evidence to prove that she was prescribed medication for pain.

- [24] I note that all the medical reports in evidence, including that of Dr. Woods, speak of complaints by the claimant of pain in the area of the injury. Dr. Selvarajah, on seeing the claimant on 2nd April 2019, reported a history of chronic pain to her injured right thigh and right knee and that she was using medication and a topical cream muscle rub to relieve the pain. Dr. Ackie, in his report of 5th September 2019 informed that “the striking pain radiates from the right lateral thigh area of previous injury down the leg”. Even in the absence of evidence of prescriptions for pain medication, on the evidence of the claimant and the doctors, and given the extent of her injury, it is safe for the court to conclude that she has, and continues to suffer pain and discomfort from her injury.

Loss of amenities

- [25] The claimant deposes that as a consequence of her injury, she can no longer run and play with her kids. She states that that the unsightly scar to her right leg is about 15cm long and is extremely embarrassing. Consequently, she says, she refrains from going to the beach and wearing a swimsuit since she is very conscious of the conspicuous scar. Additionally, she informs that prior to the accident, she enjoyed wearing shoes with heels, but since then, she can no longer do so, and has to resort to wearing only flat shoes.

The extent to which pecuniary prospects are affected/future loss of earnings

- [26] The claimant submits that she ought to be awarded damages for loss of future earnings. Dr. Ackie, in his report dated 5th September 2019 noted that the stiffness and pain to the claimant’s right leg had been occurring with increasing frequency and as such, was affecting her quality of life and her ability to perform her duties at work. Therefore, he recommended that in view of the circumstances, it was in the best interest of the claimant and her employer that “she retires from her present employment on medical grounds”. As a result, the claimant was granted early retirement with effect from 31st October 2019. The letter from her employer stated that

management had made every effort to find alternative employment for her but expressed regret that there was no suitable position available “at present”.

[27] Mr. Jones submits that had it not been for the injury, the claimant was likely to continue in her employment as an office attendant for the rest of her natural working life, to approximately the age of 60. The claimant states that since her employment at GTM was terminated, she has been unable to find suitable employment given her existing condition of deep vein thrombosis. The claimant is now 45 years old and proposes the sum of \$98,113.68 as future loss of earnings (calculated based on a multiplicand using her last monthly salary and a multiplier of 9 years - \$908.46 x 12 x 9).

[28] The 1st defendant asserts that a claim for future loss of earnings ought to be wholly disallowed. Learned counsel Ms. Gibson contends that the claimant purports to make a claim under this head in submissions but future loss of earnings was never pleaded in her claim, nor does the evidence before the court support an award for future loss of earnings. Further, the 1st defendant relies on the 9th March 2020 medical report of Dr. Charles Woods which states:

“Ms. McNeil has mild disability at this time, which in my opinion can be treated or improved with aggressive continued physical therapy and muscle strengthening to her right leg. I see no reason why she cannot continue to work, as long as her relatively mild physical limitations are taken into consideration.” (Emphasis added)

[29] Counsel asserts that the claimant is capable of employment and cited the case of **Luker v Chapman**⁵ where Brown J. made it clear that the claimant is under a duty to mitigate his losses, notwithstanding he has suffered loss owing to the wrongdoing of a defendant. The case further explained that this may mean that he takes a job of lesser financial reward than that in which he was previously employed. Therefore, counsel submits that the claim for loss of future earnings in this case cannot be justified since although the claimant may be unable to continue in her previous employment, the medical evidence suggests that she is suited for alternative employment. I note here that the employer in **Luker v Chapman** offered the claimant a clerical position when he was unable to continue his pre-accident job as a telephone engineer. On the contrary, in the instant case, the employer categorically stated that was “no suitable position available at present”.

⁵ (1970) 114 Sol Jo 788

[30] Further, counsel places great emphasis on the fact that it was the claimant who, by letter to her employer, requested consideration for early retirement citing her health condition. The claimant avers that she was served with a letter from GTM informing her that she was being sent on retirement leave for medical reasons. Ms. Gibson referred the court to the said letter and contended that this assertion by the claimant is not borne out therein. On the contrary, she points out, the letter states:

*“Further to your Physician, Dr. Junior Ackie, **and your own letter regarding your health and consideration for early retirement**, I write to confirm that your Executive Management **considered your request**.*

*Your Executive Management considered your request and with regret I must inform that they have **agreed to grant you early retirement** with severance payment with effect from October 31st, 2019 due to your Health conditions with respect to your list of duties and your capacity to perform these duties given your health condition.”*
(Emphasis added)

[31] Learned counsel submits that the claimant’s loss of employment was initiated by her own actions and that this is not indicative of her general inability to work. At the hearing, the claimant was cross-examined solely on this point to which she had to concede that, in fact she requested early retirement with a qualification that this request was based on her doctor’s report. Counsel posits that the medical report of Dr. Woods contains a prognosis in stark contrast to the claimant’s assertions regarding her ability to work. There is no basis, counsel argues, upon which the court can find that the claimant has suffered any material handicap on the labour market.

[32] Whereas the reports of Dr. Ackie and Dr. Woods appear to contradict each other in that Dr. Ackie recommended the early retirement of the claimant, and Dr. Woods saw no reason that she cannot continue to work, I consider that the examination of the claimant by Dr. Woods took place 6 months after the 5th September 2019 report of Dr. Ackie. Having stated that, I am of the view that the assessment of the claimant by the specialist orthopaedic surgeon is to be preferred over that of the general practitioner. I conclude, therefore, that the claimant is employable and is in a position to secure a job on the labour market.

[33] There is no evidence before the court as to the qualifications or lack thereof as regards the claimant and so, the court is not in a position to determine what suitable jobs are available to her, and consequently, whether or not a decrease in income would result in new employment for her. I

would disallow the claim for future loss of earnings. Interestingly, the claimant has made no claim for actual loss of earnings to date.

Future medical care

[34] The claimant maintains that she continues to suffer pain and discomfort occasioned by the injury and will need medication to alleviate the pain in the foreseeable future. She asks the court to award the sum of \$5,000.00 under this head. Additionally, under this head, Mr. Jones relies on the report of Dr. Woods that the claimant's condition can be treated or improved with physical therapy and muscle strengthening.

[35] Apart from insisting that there is no medical evidence that the claimant is in pain, as none of the medical reports speaks to pain management, the 1st defendant counters that the claim for physiotherapy costs is inconsistent with the claimant's request for damages for future loss of earnings for 9 years, and that these cannot stand together. Mr. Jones is of the view that both can co-exist.

[36] Dr. Woods opined that the muscle wasting of the claimant's right thigh is as a result of the lack of physiotherapy during her recuperative phase. Learned counsel Mr. Daniel submits that the claim for physiotherapy in the claimant's submissions (alluded to earlier), implies that the claimant was aware that physiotherapy was required. With none of the medical reports before the court, apart from that of Dr. Woods, indicating that the claimant should undergo physiotherapy, the court will not ascribe any blame to the claimant for failing to avail herself of the required treatment.

[37] In my view, the opinion of Dr. Woods that the claimant's mild disability can be treated or improved with aggressive continued physical therapy and muscle strengthening certainly justifies a claim for future medical care. In the absence of any evidence of cost in this regard, as well as for future pain management, the sum of \$5000.00 for future medical care is reasonable in the circumstances, and I award that amount.

The assessment on pain and suffering and loss of amenities

[38] I am aware of the need to strive to make an award on quantum in general damages in keeping with awards made in comparable cases. In **Dawn Noel v Don John**,⁶ the court cited the well-

⁶ GDAHCV2011/0568 at paragraph 17

known authority of **Wright v British Railways Board**⁷ where Lord Diplock articulated the principle that the figure arrived at “must be basically a conventional figure derived from experience and from awards in comparable cases”.

[39] Mr. Jones submits that a figure of \$80,000.00 in general damages for pain and suffering is fair compensation for the claimant. Mr. Daniel and Ms. Gibson are of the view that the sum of \$35,000.00 is reasonable in this case, and certainly not more than \$40,000.00.

[40] On behalf of the claimant, Mr. Jones cited the Court of Appeal case of **Grenada Steel Works Ltd v Herman Forde**⁸ as having striking similarities with the case at bar. The claimant, a truck driver, was impaled on a piece of steel. He suffered a deep laceration, 17cm in length, to his right leg, which required 110 stitches. He could not drive his truck for 6 weeks. His evidence at the trial was that he was weak and walked with a limp. The Court of Appeal upheld the award of the court below of \$40,000.00 in general damages for pain and suffering and loss of amenities.

[41] Counsel submits that in this case, the court ought to consider a significantly higher award than \$40,000.00 because of the pain and discomfort the claimant suffers up to today, over 12 years after the accident, the further condition of deep vein thrombosis developed as a consequence of the injury and the need to uplift the award to reflect the impact of inflation.

[42] In **Mercedes Delpleshe v Samuel Emmanuel De Roche**,⁹ the claimant who was 54 years old at the time, was struck by a motor vehicle and suffered trauma to her head and left knee, abrasions to her face, lacerations to her forehead, nose and upper lip, bleeding from her left nostril. She was hospitalised for 4 days and she was left with scars to her forehead and face. Her evidence was that she needed physiotherapy but could not afford it, and that she was given prescriptions to ease her pain but sometimes she did not have the money to buy the tablets. Notwithstanding her statement that she worked as a home assistant and could no longer work because of her pain, the court found that there was no medical evidence to suggest that her injuries made her incapable of continuing to work as a home assistant or at all. Master Lanns awarded her \$65,000.00 as general damages for pain and suffering and loss of amenities.

⁷ [1983] 2 All ER 698 at 699

⁸ Civil Appeal No. 17 of 2004, delivered April 24, 2006

⁹ Claim No. 41 of 2012, St. Vincent and the Grenadines, delivered April 19, 2013

- [43] Corbin Lincoln M., as she then was, in March 2016, in **Ronald Rossi v Stephanie Peters**,¹⁰ awarded \$80,000.00 for pain and suffering and loss of amenities to the claimant, a 46 year old man at the time of his injuries suffered from being thrown off his motorcycle. According to the medical evidence, he suffered a rupture of a ligament of the right knee for which he underwent surgery. Contrary to the evidence of the claimant, the court found that there was no medical evidence to support the claimant's assertion that he suffered a laceration to the left facial region, which required sutures, among other injuries. He was hospitalised for 16 days as stated in the medical report, although his evidence was that he spent 3 weeks in hospital. He was totally disabled for 4 months. However, there was no evidence of permanent disability.
- [44] Arguing for the 1st defendant, Ms. Gibson says that an award of \$80,000.00 is wholly unreasonable, and cites the following cases in attempting to convince the court to make a much smaller award.
- [45] In **Eugene Teague v Claxton Rush**,¹¹ the claimant, a heavy equipment operator/truck driver, was 36 years old at the time of a motor vehicular accident in which the defendant's vehicle collided with the claimant on his motorcycle. As a result, the claimant suffered a supracondylar comminuted spiral fracture of the left femur with total displacement with a swelling deformity in the lower third of the thigh, and other lesser injuries. He underwent surgery and was hospitalised for 16 days. At the time of the accident, the claimant was an avid footballer and cyclist. As a result of the accident, he was unable to play sports of his choice and enjoy other amenities. The claimant testified about his unsuccessful attempts to find employment. The medical report, however, did not give definitive information on a prognosis for his recovery or the extent of the effect of his disability. Harris J. awarded \$15,000.00 for pain and suffering and \$25,000.00 for loss of amenities (a total of \$40,000.00).
- [46] Moise M. as he then was, in **Litha Peters v Lecia Quow**,¹² awarded a total of \$45,000.00, being \$30,000.00 for pain and suffering and \$15,000.00 for loss of amenities, to the claimant who sustained an oblique fracture of the tibia when she slipped and fell in an apartment as a result of the negligence of the defendant in allowing water from a hose to enter the apartment. The

¹⁰ DOMHCV2013/0308

¹¹ ANUHCV2007/0417, delivered July 9, 2010

¹² VC 2018 HC 28, St. Vincent and the Grenadines

claimant was later diagnosed with post-traumatic neuritis of the left leg and it was the opinion of a medical doctor that she would endure discomfort or pain in the left leg for the rest of her life.

[47] In **Fae Ann James v Randy Thomas**,¹³ a minor, 7 years old, was struck by a vehicle when she was attempting to cross the road and suffered displaced fractures of the left distal tibia and fibula. She underwent surgery and was fitted with an above-knee cast. She was discharged from hospital after 3 days but was then seen as an outpatient. The court considered the trauma the child must have endured seeing her bone protruding out of her leg, the discomfort of the heavy cast, the inability of the child to look after herself and relying on her parents and caretaker for regular functions, and made an award of \$45,000.00 for pain and suffering and temporary loss of amenities.

[48] The court awarded \$50,000.00 for pain and suffering and loss of amenities in the case of **Errol Edwards v Gabriel George**.¹⁴ In that case, the defendant's vehicle collided with the claimant's SUV. As a result of the impact, the claimant sustained a fractured right hip, a puncture wound to his right leg, swelling and soreness of the right knee and abrasions to his left knee, forehead and face. He was hospitalised for 14 days where his right leg was placed in traction. He testified as to his constant pain and limitations, which the court juxtaposed with the medical evidence provided.

[49] These cases highlighted by learned counsel for the 1st defendant were used to demonstrate that the injuries sustained were more severe than suffered by the claimant in the case at bar. The defence points out fractures and multiple injuries to various parts of the body as being far more serious than the single laceration to the right thigh of the claimant. Without the slightest intention of giving a medical opinion, I am of the view that in the context of pain and suffering, it is not necessarily true that a person who sustains a more severe injury endures more pain and suffering than one with a seemingly less serious injury. In fact, the court in **Fae Ann James v Randy Thomas** rejected the claimant's submissions to classify the fractures as serious where the medical evidence showed that they had healed 100%.

[50] In arriving at a determination of the quantum for pain and suffering and loss of amenities, I consider the similarities and differences of the cases cited to arrive at a reasonable amount. I

¹³ GDAHCV2016/0186, delivered September 28, 2017

¹⁴ GDAHCV2011/0424, delivered March 25, 2013

agree with learned counsel for the claimant that this case has striking similarities with **Grenada Steel Works Ltd v Herman Forde** involving a deep laceration to the leg. I accept the distinction made that in this case, the claimant developed a secondary condition, deep vein thrombosis, and is complaining of pain 12 years after the accident that caused her injury. As mentioned before, I also accept the evidence of Dr. Woods that the claimant has a mild disability and her injury can be treated or improved by physical therapy and muscle strengthening. In relation to loss of amenities, I consider the limitations the claimant avers including the embarrassment of this relatively young woman with an ungainly scar visible on donning her swimwear and the taking away of her pleasure to step out in high-heeled shoes for several years up to today. Hopefully, she can obtain optimum relief with the recommended treatment. No doubt the claimant's life has been significantly affected since the incident when she sat in the vessel as an innocent passenger on her way home with her children. In all the circumstances of this case, I award the claimant \$65,000 for pain and suffering and loss of amenities.

- [51] As determined before, all awards for damages are to be apportioned with 70% to be paid by the 1st defendant and 30% by the 2nd defendant.

Order

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

- 1) Special damages in the sum of \$2143.00:
1st defendant - \$1500.10
2nd defendant - \$642.90
- 2) Interest on special damages at the rate of 3% per annum from the date of the accident to judgment on 9th August 2019.
- 3) General damages for pain and suffering in the sum of \$65,000:
1st defendant - \$45,500.00
2nd defendant - \$19,500.00
- 4) Interest on general damages for pain and suffering and loss of amenities at the rate of 6% per annum from the date of service of the claim to the date of judgment on 9th August 2019.

- 5) Damages for future medical care in the sum of \$5,000:
 - 1st defendant - \$3,500.00
 - 2nd defendant - \$1,500.00
- 6) Interest on the global sum at the rate of 6% per annum from the date of this assessment, 8th June 2021, to the date of payment in full.
- 7) Prescribed costs pursuant to CPR 65.5 in the sum of \$6492.87:
 - 1st defendant - \$4545.01
 - 2nd defendant - \$1947.86.

[53] I am grateful to counsel for their assistance.

Tamara Gill
Master

By the Court

Registrar