

THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

Claim No. SKBHCV2012/0353

Between:

LENROY CONNOR

Claimant

And

CYNTHIA FLEMMING

Defendant

Before:

Master Fidela Corbin Lincoln

Appearances:

Ms. Felicia Johnson for the Claimant

Mrs. Karene Paul Nisbett for the Defendant

2015: June 16
November 17

2016: January 14

***Assessment of Damages – Pre- Existing Injury - Whiplash Injury Which Exacerbated
Previous Injury – Apportionment of Damages – When can Damages be Apportioned***

JUDGMENT

- [1] **CORBIN LINCOLN M:** The claimant commenced proceedings against the defendant for damages arising from a motor vehicle accident which occurred on 8th September 2006 and which is alleged to have been caused by the negligence of the defendant. The claimant obtained judgment in default of defence against the defendant. Special damages were awarded in the sum of \$2,627.00 with general damages to be assessed.

Principles Governing Assessment of General Damages

[2] The legal principles governing the assessment of general damages in personal injury cases are well established. The main factors to be taken into account are:

- (1) the nature and extent of the injuries sustained;
- (2) the nature and gravity of the resulting physical disability;
- (3) the pain and suffering endured; and
- (4) the loss of amenities; and
- (5) the impact on the claimant's pecuniary prospects

Nature and Extent of Injuries and the Nature and Gravity of the Resulting Physical Disability

[3] The claimant suffered personal injuries as a result of the accident. He was first examined by Dr. Akinwande Oduntan whose medical report, dated 31st October 2007, states that the claimant came to the Pogson Hospital on 8th September 2006 complaining of painful neck and stiffness. Dr. Oduntan's report records that the claimant admitted that he suffered a neck injury in a motor vehicle accident in September 2004 and was diagnosed with vertebral disc herniation and nerve root compression. Evidence of the claimant's previous injury is contained in a medical report by Dr. Macmilla Hodge dated 8th May 2006, which states that the claimant was injured in an accident on 4th September 2004.

[4] Dr. Oduntan states that he diagnosed the claimant with "*whiplash injury with exacerbation of old neck injury (disc herniation and nerve root compression)*" and that the claimant '*was treated with pain killers, muscle relaxants and a neck brace and his whiplash has resolved.*'

[5] Dr. Macmilla Hodge, in a report dated 25th July 2008, states that the claimant presented himself on 24th July 2008 for an assessment of injuries sustained in a vehicular accident which occurred on 8th September 2006. The report states that the injuries "*are superimposed on injuries which are the persistent sequelae of a previous accident of 4th September 2004 ...*". Dr. Hodge states that upon examination he found :

- (1) Loss of the normal lordotic curve of the cervical (neck) spine due to muscle spasm.
 - (2) Increase and aggravation in severity and extent of neck pain with numbness and tingling and weakness extending down the left arm but notably down to the hand involving all the fingers and in addition cramping and sticking of the last two fingers in palmar flexion.
- [6] Dr. Hodge states further that he expects *“the injuries to be more recalcitrant to amelioration by medication and physical therapy. Already this is July, 2008 and there has been no significant improvement in findings and symptomatology”*. He expects rapid development of severe arthritis in the neck spinal joints with some physical disability and ongoing medical management is forecasted.
- [7] A further report by Dr. Hodge dated 21st September 2012 states that since the report dated 25th July 2008 the claimant was seen four times. On 15th September 2012 the findings were:
- (1) Tightness and weakness of the posterior neck muscles;
 - (2) Episodic pain in left neck radiating down to shoulders and then to fingers
 - (3) Sticking of the left little finger
 - (4) Episodic falling of the left thumb into palm
 - (5) Painful spasm of all the fingers and lasting a little while before it wears off
- [8] Dr. Hodge states that the findings will continue indefinitely and will continue when secondary arthritis sets in within a few years resulting in a diagnosis of cervical spondylosis. A neck operation could help very much but it can produce an uncorrectable paralysis as a complication and therefore he would hesitate to recommend it.

Pain and suffering and Loss of Amenities

- [9] The claimant's evidence is that the defendant's motor vehicle collided with the rear of his motor vehicle causing his head to be 'jolted backwards' suddenly. The force of the impact

pushed his motor vehicle forward and caused it to collide with a motor vehicle in front. The second impact caused his head to jolt forward. He states that he immediately felt numbness in his neck and went to Pogson Hospital where he was examined by Dr. Oduntan. An x-ray was done and he was advised to wear a neck brace for two (2) weeks and was prescribed medication.

- [10] While wearing the neck brace he could not turn his neck because he was in constant pain. He was in intense pain for the first 5-6 days after the accident and the pain thereafter began to subside. After the accident he began experiencing what he describes as “shock waves and needles” in his left arm. He also experienced stiffening of the left arm and the right leg. He still experiences pain.

Impact on Pecuniary Prospects

- [11] The claimant states that he has always worked as a farmer and, apart from it being his source of income, he loves farming. After the first accident in 2004 his routine was interrupted for about 2-3 months and he was gradually able to return to his working hours. He states that after the accident in 2006 his schedule had to be reduced to about 3-4 days per week and he could only work 2-3 hours per day.
- [12] Presently he goes to the farm every day but because he is unable to work, lift weights or bend as he did previously he had to engage labourers whom he supervises. His income has therefore been greatly reduced.

ARE THERE MULTIPLE CAUSES OF THE CLAIMANT’S CURRENT MEDICAL CONDITION? SHOULD DAMAGES BE APPORTIONED OR REDUCED?

- [13] Assessing the damages payable to the claimant in this case would not give rise to much difficulty but for the fact that at the time of the accident giving rise to this claim the claimant was suffering from ongoing symptoms of a disc herniation which he suffered in an accident in 2004. Counsel for the defendant submits that the defendant should not bear liability for the medical problems associated with the claimant’s pre-existing condition “because irrespective of the accident which occurred in September 2006 the Claimant would still

have been experiencing the same issues with health based on the medical report of Dr. Hodge on the 8th May, 2006.”

- [14] I remind myself that at this stage the court is engaged in an assessment of damages following a judgment in default on liability. While causation in the strict sense is no longer in issue the claimant must establish, on a balance of probabilities, that the loss or the extent of loss alleged was caused by the negligence of the defendant.
- [15] The claimant relies on several medial reports, the most recent of which is the medical report by Dr. Hodge in 2012 to support his claim for compensation for losses suffered as a result of the defendant's negligence. While the medical reports by both Dr. Hodge and Dr. Oduntan recognise that the claimant was injured in separate accidents and thus had a pre-existing injury at the time when the action giving rise to this claim arose, the reports do not go further to assist the court in determining to what extent, if at all, the whiplash injury contributed to the claimant's current medical condition.
- [16] Dr. Oduntan's medical report dated 31st October 2007 stated that he treated the claimant for the whiplash injury and states that *“his whiplash has resolved.”* In oral evidence Dr. Oduntan stated that the whiplash injury did not make the claimant's existing injuries worse but because of his existing injury he would have experienced more pain when he sustained the whiplash injury.
- [17] Dr. Hodge's oral evidence is that the MRI done after the accident in 2004 disclosed serious disabling injuries. He states that it does not appear that any serious treatment was taken in relation to this injury. Treatment would have helped the claimant's disc herniation and other injuries to improve but could not have “cured” them. The disc herniation – similar to when someone gets a cut- would have left a “scar” or made that part of the body weaker. The area affected by the disc herniation could therefore be damaged again very easily even by something like bad posture much more a whiplash injury. A further injury, such as the whiplash injury, can reactivate or make the existing injuries worse as the body would be more intolerant of the injury. As a person gets older he gets weaker and you can't put injury upon injury. The claimant's condition as set out in his 2012 report would have happened anyway as result of the injuries sustained in 2004 but would not have been so

severe, extensive and crippling if he did not also sustain the whiplash injury. Dr. Hodge stated further that both the injuries sustained in 2004 and the whiplash injury sustained in 2006 would have contributed to the current condition. It is cumulative and he cannot say what percentage of the current condition would have been caused by the 2004 disc herniation and what percentage by the whiplash.

- [18] I have had some difficulty discerning the correct approach in cases where a claimant suffered a previous injury which has contributed to his current medical condition or where there may be multiple causes of the claimant's current medical condition. In what circumstances can the court apportion damages between or among tortfeasors?
- [19] I have been unable to identify any cases from this jurisdiction which addresses the issue of when a court may apportion damages. I have therefore considered cases from out of the jurisdiction in an effort to ascertain how the issue has been approached in other jurisdictions. An examination of several cases from the United Kingdom (UK) reveals a complex legal landscape where the approach has not always been consistent and the cases, in my view, not easily reconcilable.
- [20] In **Bonnington Castings Ltd. v Wardlaw**¹ the claimant developed silicosis as a result of inhaling dust whilst working as a dresser. Some of the dust exposure was negligent and some non-negligent. The employers alleged that he would have had silicosis from the non-negligent dust alone and should not recover. The House of Lords held that the claimant could recover in full since the negligent exposure had materially contributed to the silicosis and the contribution was material if it was more than minimal.
- [21] It should be noted that the defendant in **Bonnington** did not argue that it should only be liable for the part of the injury that was attributable to its negligence nor was any expert evidence called to assess the contribution the negligent exposure made to the claimant's injury.

¹ [1956] A.C 232

[22] In **McGhee v National Coal Board** ² the claimant contracted dermatitis from two possible sources. One possible source was brick dust which was still on his body when he cycled home from work because he had not been unable to shower at work since his employers had removed the showers. The removal of the showers was found to have been in breach of the duty of care which the employer owed to the claimant. The House of Lords held that liability had been established because the failure to provide facilities for the claimant to shower had materially contributed to the risk of injury.

[23] In both **Bonnington** and **McGhee** the Court appeared to have used the test of whether the defendant's negligent act 'materially contributed' to the injury to hold the defendant fully liable for the claimant's injury.

[24] In some cases however the court has apportioned damages.

[25] In **Thompson v Smith Ship Repairers Ltd. (North Shields)** ³ the claimant suffered noise deafness from pneumatic tools, a consequence which the court found a prudent employer should have been aware of. A significant portion of the claimant's deafness was however caused by matters unconnected to the employer's negligence. Expert evidence was led to show how to apportion the hearing loss between the exposure for which the employer was liable and for the period for which he was not.

[26] Mustill J said at page 437D:

"The starting point for any enquiry into the measure of damages is the principle that the Court should as far as possible endeavour to restore the plaintiff to the position in which he would have found himself but for the defendant's wrongful act."

[27] At page 438F he said:

"... Justice looks to the interests of both parties, not to those of the plaintiff alone. This solution pre-supposes a division of responsibility between A and B,... How precise must this division be, before it can found an apportionment in law? What happens if the apportionment is insufficiently precise? To the latter question, general principle supplies only a guarded answer. In strict logic, the plaintiff should

² [1973] 1 WLR 1

³ [1984] Q.B 405. It is recognised that this is a decision of a High Court Judge but it has been cited for the purpose of tracing the approach of the courts in the UK.

fail for want of proof that the breach has caused the damage. Yet this seems too strict, for the plaintiff has proved some loss: perhaps it should all be attributed to the fault, simply as a matter of policy. The answer to the first question seems less difficult. The degree of accuracy demanded should be commensurate with the degree of accuracy possible, in the light of existing knowledge, and with the degree of accuracy involved in the remainder of the exercise which leads to the computation of damages. It is senseless to demand the utmost accuracy at one stage of a calculation, which involves the broadest assumption at another stage, and the application of conventional measures of recovery at yet another."

[28] At page 443D Mustill J said:

"The defendants as well as the plaintiffs are entitled to a just result. If we know . . . that a substantial part of the impairment took place before the defendants were in breach, why in fairness should they be made to pay for it? The fact that precise quantification is impossible should not alter the position . . . Thus, whatever the position might be if the Court were to find itself unable to make any findings at all on the issue of causation and was accordingly being faced with a choice between awarding for the defendants in full, or for the plaintiff in full, or on some wholly arbitrary basis such as an award of 50%, I see no reason why the present impossibility of making a precise apportionment of impairment and disability in terms of time, should in justice lead to the result that the defendants are adjudged liable to pay in full, when it is known that only part of the damage was their fault. What justice does demand, to my mind, is that the Court should make the best estimate which it can, in the light of the evidence, making the fullest allowance in favour of the plaintiffs for the uncertainties known to be involved in any apportionment. In the end, notwithstanding all the care lavished on it by the scientists and by counsel I believe that it has to be regarded as a jury question, and I propose to approach it as such"

[29] Mustill J decided that in fairness to all parties the damages must be apportioned and determined that the employer was only liable for the part of the damage caused by their negligence.

[30] In **Holtby v Brigham & Cowan (Hull) Ltd [2000] ICR 1086** the claimant was exposed to asbestos dust with a series of employers over approximately 24 years but has only been employed by the defendant company for about half that time. The trial judge held that the defendant was only liable for the damage which it had caused. He reduced the damages by 25% even though the defendant had not expressly pleaded that it was responsible for a portion of the disability since he found that the claimant's condition would have been less severe if he had only sustained exposure to asbestos dust whilst working for defendant company. The claimant appealed. On appeal the claimant submitted that he was entitled to

recover all his losses from the defendant, notwithstanding that others might have contributed to his injury. Alternatively, once a claimant had proved that the defendant's conduct had made a material contribution to his disease, the onus was on the defendant to plead and prove that others were responsible for a specific part of the injury. Further, there was no evidence to justify the deduction made by the Judge.

- [31] Stuart-Smith LJ examined the authorities, including **Bonnington, McGee** and **Thompson** and held that the defendant was liable only to the extent that its *"conduct made a material contribution to his disability"*. He stated:

"...the onus of proving causation is on the claimant; it does not shift to the defendant. He will be entitled to succeed if he can prove that the defendant's tortious conduct made a material contribution to his disability but strictly speaking the defendant is liable only to the extent of that contribution. However, if the point is never raised or argued by the defendant, the claimant will succeed in full as in the Bonnington case and McGhee's case . . . Strictly speaking the defendant does not need to plead that others were responsible in part. But at the same time I certainly think it is desirable and preferable that this should be done. Certainly the matter must be raised and dealt with in evidence, otherwise the defendant is at risk that he will be held liable for everything. In reality I do not think that these cases should be determined on onus of proof. The question should be whether at the end of the day and on consideration of all the evidence the claimant has proved that the defendants are responsible for the whole or a quantifiable part of his disability. The question of quantification may be difficult and the Court only has to do the best it can using its common sense . . . cases of this sort, where the disease manifests itself many years after the exposure, present great problems because much of the detail is inevitably lost . . . But in my view the Court must do the best it can to achieve justice, not only to the claimant but the defendant, and among defendants.

It is said by Mr. May that there is no evidence to . . . justify the deduction of 25%. I do not agree. Although it is only a question of nomenclature I think Mr. Goldstaub is right when he submits that it is not so much a question of apportionment between tortfeasors as one of proof of causation in respect of a quantifiable part of his disability by the claimant against the defendants; and further it was not so much a question of discounting the full liability figure, as counting the proportion attributable to the defendants."

- [32] Stuart-Smith LJ added that the *"question of quantification may be difficult and the court only has to do the best it can using its common sense"*. The court, he said, *"must do the best it can to achieve justice, not only to the claimant, but also to the defendant, and among defendants"*.

[33] In **Allen v British Rail Engineering Ltd** [2001] ICR 942 the claimant suffered from a condition caused by the use of hand-held vibrating tools while working for the defendant. His award was reduced, amongst other reasons, to reflect the fact that, had the defendant complied with the duty of care it owed him, his exposure to injury would have been reduced, if not eliminated. In dismissing an appeal from the award, Schiemann LJ, after considering several cases: stated:

“In our judgment the case law as it now stands establishes five propositions of which the first is concerned with liability and the others with quantifying damages.

(i) The employee will establish liability if he can prove that the employer's tortious conduct made a material contribution to the employee's disability.

(ii) There can be cases where the state of the evidence is such that it is just to recognise each of two separate tortfeasors as having caused the whole of the damage of which the claimant complains;..

(iii) However in principle the amount of the employer's liability will be limited to the extent of the contribution which his tortious conduct made to the employee's disability.

(iv) The court must do the best it can on the evidence to make the apportionment and should not be astute to deny the claimant relief on the basis that he cannot establish with demonstrable accuracy precisely what proportion of his injury is attributable to the defendant's tortious conduct.

(v) The amount of evidence which should be called to enable a judge to make a just apportionment must be proportionate to the amount at stake and the uncertainties which are inherent in making any award of damages for personal injury.”

[34] Schiemann LJ added that the *“The application of those propositions should lead to a just and principled result.”*

[35] In **Ellis v Environment Agency** ⁴ the claimant suffered a back injury in 1998 in the course of his employment. In 1999 he suffered another fall at work when he missed a foot on a ladder and was off work for 5 months. In 2000 he fell at home because his back gave way and injured his knee. He suffered continuing problems with his knee and other debilitating consequences, including bouts of depression. In 2001, the claimant commenced

⁴ [2008] All ER (D) 163

proceedings against his employer alleging that the accident in 1998 had been caused by its negligence. The claimant also had a pre-existing spinal degeneration. The defendant submitted that the award of damages to the claimant should take account of three causes and that there should be an apportionment between each of them. It submitted that the three causes were the pre-existing spinal degeneration, the June 1998 accident and the May 1999 accident. As between those three causes, it submitted that 70% should be attributed to the pre-existing degeneration, 20% to the June 1998 accident, and 10% to the May 1999 accident. The defendant further submitted that the court should depart from applying the 'but for' test as the judge had done and instead, in accordance with authority, make an apportionment with the effect of making it liable to the extent of its contribution to the claimant's injury. The claimant submitted, inter alia, that the June 1998 accident was a sufficient material cause of the April 2000 fall, and that he was entitled to 100% of his loss consequent upon both accidents. He further submitted that the May 1999 accident was no more than part of the chain of causation which on the evidence had no causative effect.

[36] The Court of Appeal held that there was no evidence that the pre-existing undiagnosed back condition was not a cause of the 2000 accident and therefore the defendant's submission that 70% of the claimant's loss should be attributed to his pre-existing condition was rejected.

[37] The court reiterated that the normal rule for causation in personal injury negligence cases is the "but for" rule. The court considered the cases of **Holtby** and **Allen** and held that principles set out in those cases are an exception to the general rule intended to do justice in a particular class of case. The Court stated :

"Although at the fringes the delineation of the class of case may be debateable, in the main it has been applied and in this court at least should be limited to, industrial disease or injury cases where there has been successive exposure to harm by a number of agencies, where the effect of the harm is divisible, and where it would be unjust for an individual defendant to bear the whole of a loss when in commonsense he was not responsible for all of it."

[38] There are therefore various decisions which either support or go against apportionment of damages.

[39] In **Ellis** the Court sought to distinguish the decisions in **Holtby** and **Allen** (where the court apportioned damages) and stated that apportionment should be limited to, inter alia, where the effect of the harm is **divisible**.

[40] There has been a plethora of commentary and judicial pronouncements on the issue of apportioning damages based on whether the injuries are *divisible* or *indivisible* and what injuries are divisible.⁵ A helpful definition of *divisible* and *indivisible* injuries is provided in the case of **Estable v New** ⁶ where Madam Justice Gropper stated:

(1) Divisible injuries are those which are capable of being separated out, such as injuries to different body parts or injuries to which the defendant has not contributed.

(2) Indivisible injuries are those that cannot be separated, such as aggravation or exacerbation of an earlier injury, an injury to the same area of the body, or global symptoms that are impossible to separate.

[41] Distinguishing between divisible and indivisible injuries has also been used as a basis for explaining and reconciling what appears to be earlier conflicting decisions on apportionment.⁷

[42] Whether or not any particular state of health or injury is divisible or indivisible is a question of fact.⁸ The cases appear to establish that in the case of a *divisible* injury damages may be apportioned but if the injuries are *indivisible*, the court must apply the “but for” test in respect of the defendant’s act.⁹ In the case of indivisible injuries, even though there may

⁵ Martin Hogg : Causation and Apportionment of Damages in Cases of Divisible Injury; EdinLR Vol 12 pp 99-105; David Marshall: Tracing the Fault Line; UK Solicitor’s Journal 6th October 2009; Bae Systems (Operations) Ltd. v Konczak UKEAT/0243/13/DA,

⁶ 2011 BCSC 1556

⁷ Hale LJ in Hatton v Sutherland [2002] 2 All ER 1; Ellis v Environment Agency [2008] All ER (D) 163; Simon Morrow: Legal Causation and Apportionment
http://teamshare.blm.scapesoft.co.uk/images/uploaded/File/Occupational%20disease%20-%20Manchester/4.%20%20Legal%20causation%20and%20apportionment_Simon%20Morrow.pdf

⁸ Bae Systems (Operations) Ltd. v Konczak UKEAT/0243/13/DA,

⁹ Hale LJ in Hatton v Sutherland [2002] 2 All ER 1; Estable v New 2011 BCSC 1556

be several tortuous or non-tortuous causes of injury, so long as the defendant's act is a cause, the defendant is fully liable for that damage.¹⁰

- [43] While I was unable to identify any decision from this jurisdiction dealing with the issue of if, and in what circumstances, the court may apportion damages, I note that there are cases from this jurisdiction where the claimant had a pre-existing injury. In both **Danny Bramble v William Danny et al**¹¹ and **Cyril Donnelly v Aldrick Octave**¹² the claimants had pre-existing injuries. The court, using the "egg shell skull" rule, awarded damages without making any deduction or apportioning damages.
- [44] In **Aubrey Smith v Calvert Fleming et al**¹³ counsel for the defendant submitted that damages for pain, suffering and loss of amenities should be reduced by 40% based on the evidence that the claimant had a prevailing condition at the time of the accident that contributed to the pain and suffering he experienced after the accident. The medical report confirmed that the claimant *"had pre-existing spondylotic pathologic changes of the cervical and lumbar regions of the spine. The trauma of the May 27th 2006 accident, transformed him into his current state of chronic affliction by pain of the neck and lower back with their associated radicular symptoms.* The learned trial judge found that there was evidence that the claimant suffered from a pre-existing chronic degenerative disease/injury but his condition was exacerbated by the injuries which he suffered as a consequence of the accident. The oral evidence of the medical doctor was that the claimant's mild to moderate condition had turned into a chronic severe condition as a result of which he was permanently disabled. Under cross examination the doctor stated that the claimant's pre existing degenerative condition contributed 40% to his state. The court did not state that in awarding damages a discount would be made to take into account the pre-existing injury notwithstanding the medical evidence that the pre-existing condition contributed 40% to the claimant's current medical state. The court did not mention the "egg shell skull" rule and it therefore not clear whether this rule was applied.

¹⁰ *Estable v New* 2011 BCSC 1556; Devlin LJ in *Dingle v Associated Newspapers Ltd* [1961] 2 QB 162, 188-189 ; Dame Janet Smith : "Causation - the search for principle" Munkman Lecture Series 17 November 2008, Leeds UK referred to in *Bae Systems (Operations) Ltd. v Konczak* UKEAT/0243/13/DA,

¹¹ ANUHCv1999/0160

¹² SLUHCv2012/0940

¹³ Claim No. AXAHCv0050/2008

[45] While the court in the above three cited cases did not use the approach of first determining whether the injury was divisible or indivisible it appears to me that the defendants in those cases would still be fully liable for the injuries using the divisible/indivisible test since the injuries in those cases all appear to me to be indivisible using the definition from **Estable v New** ¹⁴

[46] In determining whether damages can be apportioned in this case, I have considered whether the claimant's injury is divisible or indivisible. The whiplash injury, according to the evidence of Dr. Hodge, exacerbated his pre-existing disc herniation. Dr. Hodge is unable to say how much the tortious acts of the respective tortfeasors contributed to the claimant's present condition but stated that the claimant's current condition would not have been so "severe, extensive and crippling" if he did not sustain the whiplash injury. In my view the claimant's injury is indivisible. Applying the but-for test the medical evidence shows that the whiplash is clearly a cause, though not *the only* cause of the claimant's injury, and consequently the claimant will be fully liable for all damages.

Quantification of General Damages

[47] Counsel for the claimant submits that an award in the range of \$60,000.00 - \$70,000.00 would be reasonable compensation.

[48] Damages are never capable of exact estimation. In determining the appropriate award I have had regard to the following decisions.

[49] In **Danny Bramble v William Danny et al** ¹⁵ the claimant suffered a severe whiplash which exacerbated his existing degenerative joint disease. He experienced considerable pain in moving around after the accident and had to stay in bed to recuperate from his injuries. He had difficulty sleeping comfortably and moving from a sitting to a standing position, particularly when getting out of a car. When driving he experienced numbness in

¹⁴ 2011 BCSC 1556

¹⁵ ANUHCv1999/0160

his right lower back accompanied by a burning sensation with accompanying pain. He could no longer exercise, play softball, or go for walks. ¶He was awarded \$50,000 as general damages in 2003.

[50] **In Cyril Donelly v Aldrick Octave** ¹⁶ the claimant suffered, inter alia, severe whiplash with moderate to severe pain in the cervical thoracic and lumbar regions and cervical sprain. The court noted that the claimant had made a good recovery and awarded the sum of \$40,000 in 2012 for pain, suffering and loss of amenities

[51] **In Mercedes Delplesche v Samuel Emmanuel De Roche**,¹⁷ the claimant suffered trauma to her head and knee, abrasions and lacerations to face, forehead, nose and lower lip. The claimant was admitted at hospital and discharged 4 days later. She continued physiotherapy sessions as she continued to suffer from severe pains in her lower back, head and knee and had difficulty walking. She was diagnosed with degenerative disease of the lumbar and was awarded \$65,000.00 in 2013 for pain and suffering and loss of amenities. ¶

[52] The claimant in this case has not made a full recovery. He will continue to experience pain and discomfort indefinitely which will continue when secondary arthritis sets in within a few years resulting in a diagnosis of cervical spondylosis. He is a farmer whose ability to farm has been affected by his injuries. Taking into consideration the evidence and the awards made in other cases I would award the claimant the sum of \$65,000.00 as general damages.

Summary

[53] In summary it is hereby ordered that the defendants shall pay the claimant \$65,000.00 as general damages. Interest is awarded at a rate of 2 ½ % from the date of service of the claim to the date of judgment on liability and thereafter statutory interest at a rate of 5%.

¹⁶ SLUHCV2012/0940

¹⁷ SVGHCV2012/0041

[54] The claimant is awarded prescribed costs.

Fidela Corbin Lincoln
Master