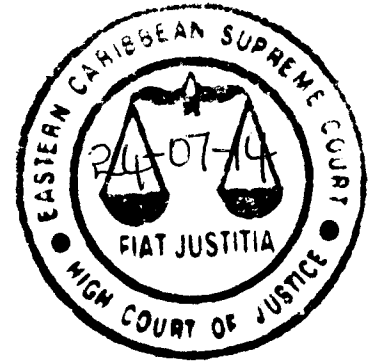


SAINT VINCENT AND THE GRENADINES
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)



CLAIM NO 80 OF 2006

BETWEEN:

TISHELLE BROWNE

Claimant

AND

LENNOX ISRAEL

1st Defendant/Ancillary Defendant

AND

MAURICE RICHARDSON

2nd Defendant/Ancillary Claimant

AND

**THE ATTORNEY GENERAL OF SAINT
VINCENT AND THE GRENADINES**

3rd Defendant

Appearances

Mr Jaundy Martin for Claimant

Ms Anneke Russell holding for Mr Duane Daniel for First Defendant/Ancillary Defendant

Mr J-Lany Williams for Second named Defendant/Ancillary Claimant and Third Defendant

.....
2013: May 14; 2014: June 20; July 24
.....

JUDGMENT ON ASSESSMENT OF DAMAGES

INTRODUCTION AND BACKGROUND

- [1] **LANNS, M:** Maurice Richardson, the Ancillary Claimant in this matter was involved in a motor vehicle collision on 19th February 2005, for which Lennox Israel, the Ancillary Defendant was found wholly liable.
- [2] In the liability Judgment handed down on 24th May 2012, the Court ordered, among other things that damages were to be assessed on the application of the Claimant and the

Ancillary Claimant. The Claimant and the Ancillary Claimant duly filed their Applications, and Affidavits, and in compliance with court order dated 19th November 2012, the Ancillary Claimant filed submissions in relation to the assessment.

- [3] The assessment eventually came on before me on 14th May 2013, after several adjournments.
- [4] When the matter was called up, Learned Counsel for the Claimant and the Ancillary Defendant informed the Court that the Claimant and the Ancillary Defendant had agreed a figure on quantum. Accordingly, an order was made in terms of the Agreement reached between them. The result is that this assessment only concerns Mr Richardson (as Ancillary Claimant) and Mr Israel (as Ancillary Defendant).
- [5] The assessment is being carried out by the evidence led by the Ancillary Claimant by way of Affidavit tested by cross examination, and by written and oral submissions advanced on behalf of the Ancillary Claimant, and by the oral submissions made on behalf of the Ancillary Defendant. The Ancillary Defendant did not file any written submissions, even though he was afforded the opportunity to do so, and he led no evidence at the hearing of the assessment.
- [6] The Ancillary Claimant, Maurice Richardson is, and was at all times material, employed by the Government of St Vincent and the Grenadines as an ambulance driver. At the time of the collision, he was taking pregnant Tishelle Browne (who had gone into labour) to the Milton Cato Memorial Hospital to be delivered of her baby. As a result of the collision, all parties sustained injuries of varying degrees, although the injuries sustained by Tishelle were more severe.
- [7] During the accident, Mr Richardson's legs were pinned under the dashboard, resulting in injury to both knees. He could not move. Bystanders pulled apart the dashboard, freed Mr Richardson and took him to the Emergency Department of the Milton Cato General Hospital. X-rays were performed and Mr Richardson was discharged on the same day with pain killers. He stayed off work for three weeks and resumed his pre-accident duties thereafter. But he had to obtain a further five days because he was still in pain and could not do much weight bearing. He was limping and in terrible pain and had to take pain killers to manage the pain. The pain is exacerbated by cold and rainy weather. He still drives the ambulance, but the pain affects his driving. He wonders whether the problem with his knees will affect his employment with government.
- [8] Mr Richardson asserts that before the accident, he was a healthy man with an active social life, playing cricket, dominoes, football, farming and participating in Carnival celebrations. Except for playing dominoes, he can no longer enjoy sports or do any farming. For a while after the accident, he could not do his laundry, he could not cook for himself, and he could not clean his bedroom. Mr Richardson states that he had to rely on his mother to cook for him and he paid someone for help in washing and cleaning.

- [9] He asserts that his sex life is affected. According to him, before the accident, he had a healthy sex life. During the time he was off work, he was unable to have sex and is still unable to have sex as frequently as he used to. This inability has put a strain on his relationship with his girlfriend.
- [10] I have seen three Medical Reports in relation to Mr Richardson's injuries. The first in time is that of Dr C Jones dated 21st May 2008. Dr Jones reported that when he examined Mr Richardson on 21st May 2008, he complained of occasional difficulty ambulating and also of intermittent knee pain. Dr Jones stated that his findings are indicative of a chronic tendon injury bilaterally of the cruciform tendons in the region of the knee joint which may continue to be symptomatic for an indefinite period of time. There is no indication that Mr Richardson pursued any form of follow-up care and management of his injury during the period 2005, after he resumed duties and his visit to Dr Jones in 2008
- [11] Mr Richardson was seen by Dr Charles Woods on 12th January 2009. He was found to be fully ambulant without difficulty. On examination, both knees were normal in appearance. There was no swelling or deformity. The mobility of the knees was satisfactory, but there was significant crepitus on movement, and some joint line tenderness on palpitation. There was no Ligamentous instability of the knees. Dr Woods, however, diagnosed Mr Richardson with post traumatic degenerative disease or osteoarthritis of both knees. He entertained no doubt that the osteoarthritis was initiated by the trauma sustained in the motor vehicle accident, as Mr Richardson was asymptomatic prior to the accident. His prognosis was that Mr Richardson would have lifelong problems with both knees as his condition will invariably worsen with age despite palliative treatment with medication and physiotherapy. Under cross examination, the Ancillary Claimant testified that he never attended Dr Woods prior to the accident.
- [12] Mr Richardson was last seen and assessed by Dr Woods on 4th December 2012. He reported that Mr Richardson complained of pain to both knees which affected him on the job when he has to lift heavy objects. He noted that Mr Richardson's condition remained relatively unchanged since his last examination. He concluded that Mr Richardson would have constant knee pain which will increase as he becomes older and his arthritis worsens. He will need constant physical therapy to relieve his symptoms and may require knee replacement in his advanced years depending on how severely his degenerative disease progresses.

ISSUE

- [13] The main issue for determination is what quantum of damages is the Ancillary Claimant entitled to recover?

Special Damages

Home help

- [14] Where a person needs to employ extra assistance in the home for cooking, cleaning or laundering, the costs are recoverable¹
- [15] In his Statement of Claim, Mr Richardson pleaded a total of \$630.00 as special damages for "cost of extra help at home" for 21 days at \$30.00 .per day. He repeated this claim in paragraph 16 of his Affidavit in support of the assessment.
- [16] Counsel for the Ancillary Defendant has challenged this claim on the ground that it has not been proved. Counsel for the Ancillary Claimant, while conceding this point, has submitted that on the authority of **Greer v Alston's Engineering Sales Services Ltd**² the court can make an award of nominal damages even though it has not been strictly proved.
- [17] It is well settled that special damages must be strictly pleaded and strictly proved, if they are to be recovered (**Ilkew v Samuel**³ and **Augustine Duncan v Commissioner of Police**.⁴
- [18] There is no dispute that the claim for \$630.00 as special damages for home help has not been proved. Nevertheless, the court accepts that Mr Richardson would have needed some time to recuperate from the trauma, pain and discomfort associated with the accident therefore, the court proposes to award a nominal sum. So, on the authority of **Greer v Alston's Engineering Sales and Services Ltd**, the court awards Mr Richardson the nominal sum of \$300.00 for home help.
- [19] In making this award, I am also guided by the approach taken by Cottle J In **Carter v. St Clare Latham Concrete and Aggregates Limited**, supra, wherein Master Cottle, as he then was, allowed \$300.00 per month for post accident care.

GENERAL DAMAGES

- [20] In assessing general damages the court has to consider the following: the nature and extent of the injuries sustained; the nature and gravity of the resulting physical disability;

¹ Freudhofer v Poledano [1972] VR 287 (FC) (2005); Donnelly v Joyce, (1973) 3 All ER, 475 at (head note); Carter v. St Clare Latham Concrete and Aggregates Limited, Claim No 524 of 2005 (St Vincent and the Grenadines);

² [2003] UKPC 46

³ [1963] 2 All ER 879

⁴ SLUHCV2002/0052

the pain and suffering which had to be endured; loss of amenities; and the extent to which a claimant's pecuniary prospects have been affected. .

Pain and suffering

- [21] In **CCAA Ltd v Julius Jeffrey**⁵, Gordon J.A quoted Lord Hope of Craighead in **Wells v Wells** as saying;

“The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the court’s best estimate of the plaintiff’s general damages.”

- [22] Counsel for the Ancillary Claimant has submitted that a figure of \$150,000 would be a fair and reasonable amount for pain and suffering and loss of amenities. Counsel cited cases from St Vincent and the Grenadines, other OECS jurisdictions and the wider Caribbean region. However, Counsel seems to rely mainly on the St Vincent case of **Kendall Fredericks v Carlton Cunningham**⁶ in which the High Court of St Vincent and the Grenadines awarded \$150,000 to the 12 year old Claimant whose leg was crushed by a banana laden truck driven by the Defendant.

- [23] Counsel for the Ancillary Defendant has submitted that the suggested award is excessive. She urged the court to award the sum of **\$3,000** only for pain and suffering because the Ancillary Claimant has not sustained any life threatening injury. Counsel pointed to the Medical Reports of Dr Woods where he disclosed that “there were no bony injuries sustained”. Counsel was of the view that as the Ancillary Claimant was seen at the Emergency Department and discharged with pain killers, this tends to suggest that the injury was a minor soft tissue injury and not of such a nature as to be hospitalized. Counsel also pointed to the fact that the Ancillary Claimant did not pursue the physiotherapy recommended by Dr Woods since 2009. She submitted that his lifestyle might have contributed to the situation in which he now finds himself.

- [24] The court is of the view that even though there were no bony injuries sustained, it does not necessarily mean that there was no other injury and no pain and suffering. In the case of **Farrier v Robinson and Wells**,⁷ Sylvester J quoted the doctor as saying that “where x-rays can show bones quite well, tattered down nerves cannot be shown.” This quote may

⁵ St Vincent Civil Appeal No 10 of 2003

⁶ Claim No 475 of 2002

⁷ Grenada Civil Suit No 230 of 1994

very well be pertinent to this case, especially in light of the pain experienced by the Ancillary Claimant and the diagnosis of post traumatic degenerative disease or osteoarthritis of both knees.

The award for pain and suffering

- [25] Compensatory awards are meant to put Claimants in the same position they would have been in had the accident not occurred. In doing so, the Court would be guided by comparable awards for comparable injuries in this jurisdiction and other jurisdictions with similar social and economic conditions to those prevailing in St Vincent and the Grenadines.
- [26] I accept, as stated in the Medical Reports and in the Witness Statement tendered by Mr Richardson that Mr Richardson experienced chronic pain immediately after the accident, and continues to experience some degree of pain, and is hampered in some way in his movements, and in engaging in the usual activities. He is not however disabled. He has an impairment which restricts him in his occupational demands as an Ambulance driver. He continues to do the same work albeit with some discomfort. Notwithstanding my acceptance as stated above, having seen and heard the Ancillary Claimant, I was of the view that he had made some progress and that while he might have not yet been back to normal; his situation had not deteriorated but rather had improved since his last Medical assessment on 4th December 2012. He walked with a normal gait. However, he told the court that he walked normal until the pain "hit me".
- [27] As to the allegation that his sex life has been affected, there is no medical link to this alleged loss of amenity. None of the doctors came to the conclusion that the Ancillary Claimant's sexual efficiency or potency had diminished. His girlfriend does not file any affidavit to support this claim. The court has formed the view that the Ancillary Claimant has a tendency to exaggerate, and that he has not been genuine in relation to his claim that the injury to his knees have affected his sex life.
- [28] In the local case of **Kendall Fredericks v Carlton Cunningham**, supra, cited by Counsel for the Ancillary Claimant, the 12 year old Claimant sustained a crush injury to his leg. He underwent multiple surgeries. The Medical Report disclosed that the Claimant was at high risk of precocious development of osteoarthritis of the knee and ankle. The Court in the year 2009 awarded \$150,000 for pain and suffering and loss of amenities.
- [29] Clearly, there are distinguishing features in the **Kendall Fredericks** case. For one thing, the physical injuries in that case were far more serious than in this case. The Claimant was a young person who experienced severe pain following the accident, and after each surgical procedure. Though not on all fours with the instant case, **Kendall Fredericks** may be used to gauge the award for pain and suffering.

- [30] The local case of **Eddeion Ballantyne v Donald John**⁸ also affords reasonable guidance for an award of general damages for pain and suffering. The Claimant, a 27 year old bartender at Young Island Hotel, was struck by a motor vehicle and pinned against a bank. He sustained severe injuries including fractures to his ribs, but his most severe injury was to his left leg which was crushed. Surgical attempts failed, and the leg eventually had to be amputated above the knee. Cottle J, in the year 2007, awarded \$90,000 to the Claimant for pain and suffering and \$40,000 for loss of amenities. In awarding the Claimant for loss of amenities, Cottle J commented that the Claimant would have lost the simple pleasure of all those pursuits that young men revel in which require two legs.
- [31] Here too, there are distinguishing features in **Eddeion's** case including the severity of the injury and the pain and suffering and loss of amenities endured.
- [32] Taking into account, the age of the Ancillary Claimant, the injuries sustained by him, the pain and suffering endured, his loss of amenities, the likelihood of having to undergo knee replacement which would in the short term inflict more pain and suffering; but which would likely in the long run alleviate or relieve the pain, And taking into account the cases in this jurisdiction with comparable awards cited by counsel, I award the sum of **\$50,000** as general damages for pain and suffering and the sum of \$20,000 for loss of amenities.

FUTURE MEDICAL EXPENSES

- [33] Counsel for the Ancillary Claimant has suggested the sum of \$250,000 in respect of future medical expenses. This sum was arrived at by using a multiplicand of \$25,000 and a multiplier of 10. Counsel for the Ancillary Defendatant has challenged this figure on the basis that the Ancillary Claimant has failed to provide any medical evidence for future medical expenses.
- [34] In his Medical Report of 2009, Dr Woods opined that the Ancillary Claimant would require constant physiotherapy to relieve his symptoms. He further opined that the Ancillary Claimant may even require knee replacement in his advanced years, depending on how severely his degenerative disease progresses. What the Doctor did not specify is what he meant by "advanced years" How far in the future; ten years, fifteen years; or twenty years down the road. I take it that knee replacement depends on the progress of the osteoarthritis.
- [35] Indeed, no evidence on quantum for future medical treatment was led. The Doctor's Report gave no indication as to how long physiotherapy would be required; nor did it give an estimate of the cost of knee replacement or cost of future treatment. It was Counsel for the Ancillary Claimant who in her written submissions provided a guide/estimate as to what the treatment costs of Physiotherapy and knee replacement is likely to be.
- [36] In **Greer v Alston's Engineering Sales and Services Ltd**, supra, approved and applied in **Claudette Francis v Cecilia Martin**⁹ Sir Andrew Leggatt spoke of the duty of the court

⁸ Claim No 277 of 1993, St Vincent and the Grenadines

⁹ Claim No HCVAP2009/007

in the absence of evidence on quantum. At paragraph 9, His Lordship stated: "An otherwise good claim for general damages should not be dismissed, even if no evidence on quantum is led and the prospective loss therefore remains unqualified. On the contrary it is the duty of the court to recognize the claim by an award that is not out of scale." (emphasis added).

- [37] I rely on the case of **Greer** to make an award for future Medical Expenses. As indicated before, it was Counsel for the Ancillary Claimant who has provided some information of the scale. She gave estimated costs for physiotherapy in the private sector as ranging from Thirty to Thirty Five Dollars per session; while the estimated costs of knee replacement in Trinidad and Tobago ranges from Twenty-five Thousand to Thirty Five Thousand East Caribbean Dollars. Counsel informed that Physiotherapy is also available at the Hospital.
- [38] I previously stated that the figure proposed by Counsel is based on a multiplicand of \$25,000.00 and a multiplier of 10. I do not agree with the multiplier used. I do not know how it was arrived at. I am content to use a multiplier of 4. In all the circumstances, and doing the best with the material before me, I would award the Ancillary Claimant the sum of \$100,000 for future medical expenses for two knee replacement surgeries per knee. I do not think it would be unreasonable for the Ancillary Claimant to receive Physiotherapy at the local Hospital.

LOSS OF EARNING CAPACITY

- [39] Relying on the principle enunciated in the case of **Moeliker v Reyrolle & Co Ltd**¹⁰, and restated and applied by Singh JA in **Alphonso v Ramnath**¹¹ Counsel has made a case on behalf of the Ancillary Claimant for loss of earning capacity. Using a multiplicand of \$21,264 (purportedly the Ancillary Claimant's annual salary), and a multiplier of 12, Counsel for the Claimant has submitted that the sum of \$255,168.00 is reasonable to compensate the Ancillary Claimant for loss of earning capacity.
- [40] Counsel for the Ancillary Defendant has challenged the claim for loss earning capacity contending that the Ancillary Claimant has not proven a real or substantial possibility of future loss of earning capacity. As noted by Gordon JA in **Dawson v Claxton**¹² "By definition, loss of future earning capacity is incapable of precise proof, absent a crystal ball. As McGregor puts it¹³ claims for loss of prospective earnings arise every day in personal injury cases, and two factors militate any exactness in the assessment of the loss, namely the uncertainty as to the precise length of time that the Plaintiff's disability will last, and the uncertainty as to the precise pattern that the Plaintiff's future earnings would, but for the injury have taken. Neither of these uncertainties prevents the court from making an assessment of the probable loss."

¹⁰ [177] All ER 9

¹¹ (1997) 56 WIR 183

¹² British Virgin Islands Civil Appeal No 23 of 2004

¹³ McGregor on Damages, 16th Edition, paragraph 370

[41] Indeed, Brown, LJ said in **Moeliker at 142 A**:

"The consideration of this head of damages should be made in two stages (1) Is there a "substantial" or "real" risk that a plaintiff will lose his present job at some point before the estimated end of his working life/ (2) If there is (but not otherwise), the court must assess and quantify the present value of the risk of financial damage which the Plaintiff will suffer if that risk materialize having regard to the degree of risk, the time when it may materialize, and the factors, both favourable and unfavorable, which in a particular case will, or may, affect the Plaintiff's chances of getting a job at all, at an equally well paid job."

[42] In **Alphonso v Ramnath**, His Lordship Satrohan Singh, J.A. at page 194, e-f, discussed the issue of the risk that the claimant will, at some time before the end of his working life, lose his job and be thrown on the labour market – whether that is a substantial risk or a speculative or fanciful risk:

"The learning from the ... cases is that this head of damage would arise where a plaintiff is at the time of trial in employment, but then there is a risk that he may lose this employment at some time in the future and may then, as a result of his injury be at a disadvantage in getting another job. ..."

[43] The Ancillary Claimant is employed. Counsel for the Ancillary Claimant has submitted that, given the resultant injury from the accident, and given the physical requirements of the Ancillary Claimant's job, and given the difficulties experienced in performing it, there is a real and substantial risk that he may be forced into early retirement. Is this mere speculation, or is it a real and substantial possibility? If he is in fact forced into early retirement, will he be entitled, to any gratuity or pension benefits that might affect or impact on his claim for loss of earning capacity? Unless there is some evidence to demonstrate that the Ancillary Claimant would be forced into early retirement, and thus leaving him disadvantaged on the job market, the claim is nothing more than speculation, and no compensation can be awarded. If it is a real possibility, then compensation may be awarded based on the degree of likelihood of the event occurring and other factors. One must therefore examine the evidence.

[44] The accident occurred more than eight years ago. Mr Richardson resumed duties four weeks after the accident. He was 40 years old at the time of the accident and 49 at the years of age at the date of assessment. It would appear that he worked three straight years after the accident before he was seen and further examined by a doctor. The accident occurred in February 2005. The first Medical report is dated 21st May 2008. By his own admission, he visited Doctor Jones in 2008.

[45] Mr Richardson is still gainfully employed as an Ambulance Driver by the Government of St Vincent and the Grenadines and has been so employed since the year 2003. Based on the written submissions of Counsel (which are really not evidence, but which have not been challenged), Mr Richardson is on the pensionable establishment. His compulsory retirement age is 60. Evidence as to his actual level of his annual income or net salary is lacking, but Counsel in her written submissions states that the Ancillary Claimant's annual

income is \$21, 264. No salary slip has been provided. Mr Richardson deposes that his job entails lifting patients of different weights on and off the stretcher.. According to him, one month ago, while trying to lift a patient into the ambulance, he felt a sudden pain and the patient and the stretcher almost dropped out of his hand. He had to seek assistance of the patient's relatives. He cannot move his feet in the manner that is required for the proper functioning of his job. He drives slower. These changes in his operations cause him to wonder, (as stated before) whether his injury would affect his employment with the government.

- [46] Counsel submits that based on Dr Wood's prognosis, and given the physical requirements of his job, and the effects of the injury, there is a real and substantial risk that the Ancillary Claimant may be forced into early retirement. Counsel makes the further submission that the nature of the Ancillary Claimant's injuries places him at a disadvantage from getting other jobs of equivalent monetary value. Counsel submits that on the basis that Mr Richardson could be expected to drive the Ambulance until the age of 60, i.e. for a further 11 years, he should be compensated for the eventuality that he would have to retire before, and unable to find a job of equivalent remuneration.
- [47] There is no Medical Report in which early retirement is recommended. There is nothing to show that if Mr Richardson does retire medically unfit before he attains the age of 60, he would not be able to do some type of work. Neither of the Doctors who examined Mr Richardson commented in their Reports on the specific work activities Mr Richardson can and cannot do. There is no medical evidence as to how the injury is likely to affect Mr Richardson's future working ability. In other words, there is no evidence as to how the injury sustained by Mr Richardson is likely to affect his future working capacity. Even if Mr Richardson is forced to retire early, there is no cogent evidence to demonstrate that the contingency of early retirement will leave him disadvantaged on the job market.
- [48] For present purposes, there appears to be no loss of working capacity. But there appears to be loss of working capacity in the future.
- [49] Dr Woods has opined that Mr Richardson would have lifelong problems with both knees as his condition will invariably worsen with age despite palliative treatment with medication and physiotherapy. Hence the matter does seem to be beyond mere speculation.
- [50] Given the degenerative injury resulting from the accident, the job nature of his employment restrictions on his ability to drive the ambulance, I find that there is a substantial risk that some time in the future, (perhaps in the next five years, at age 55), his earning capacity may diminish and the Ancillary Claimant would in the next five years be rendered less capable of driving the Ambulance and may be forced into early retirement, and the fact that if he is medically boarded off, or goes into early retirement, driving jobs may be closed to him; I am satisfied that the chances of the Ancillary Claimant getting another driving job at an equal paid remuneration; are slim.
- [51] The Question is, at what stage in the future and the extent. Natural attrition will act against the Ancillary Claimant, i.e. normal wear and tear of the body through the aging process.

This can be addressed by a contingency deduction. Furthermore, the Claimant did not, and, by his own admission, has not started the physiotherapy procedures recommend by Dr Woods four years ago in 2009, even though it is available free of charge at the Hospital. This procedure might have improved the Ancillary Claimant's chances of enjoying a better life until his retirement. This failure should also affect the quantum of damage that he should be entitled to.

- [52] I would make one further comment: If Mr Richardson is appointed as a pensionable officer, he will, most likely be subjected to the General Orders of the Civil Service, (unless his position is otherwise regulated). General Orders usually set out the procedures to be followed before Civil/Public Servants are declared medically unfit. Although Mr Richardson has deposed to certain difficulties experienced in the performance of his job, he has presented no evidence to show that he or anyone in the Civil Service has taken any steps to have him declared or retired medically unfit.
- [53] Furthermore, provision is usually made in the pension legislation for retirement with an award of pension and or gratuity before reaching the normal retiring age in the case of ill health where an officer is certified to be incapable by reasons of infirmity of mind or body of discharging the duties of his office, and the disability is likely to be permanent. The possibility also exists that, rather than retiring, Mr Richardson could be put to do sedentary work. This often happens in the public service. There is no evidence that the Ancillary Claimant is, or will be limited in performing any realistic alternative occupation. No evidence that other occupations would be closed to him.
- [54] That having been said, if Mr Richardson is not compensated, and is then medically boarded off, before he qualifies for pension, he will be under-compensated. On the other hand, if he is compensated for the contingency of losing his job before he qualifies for pension, but it never comes to pass, he will be over compensated. We cannot predict the future.
- [55] Despite the uncertainties, and the inadequacy of the evidence, there is no bar to the court awarding damages based on the future projections of Dr Woods. In the absence of any evidence by the Ancillary Defendant to the contrary, I will accept that the normal retirement age of Mr Richardson is 60 years. I am prepared to find, based on the unchallenged Medical Reports, and the unchallenged evidence of Mr Richardson that he would be rendered medically unfit before attaining the age of 60 years, and will be medically boarded off. I believe, as Dr Woods stated that Mr Richardson will continue to endure pain, will require constant physiotherapy, and that he may elect to undergo knee replacement, and that these occurrences may reduce his earning capacity in the future.
- [56] If the accident did not occur, Mr Richardson's income at age 60 would be \$233,904.00 (\$21,264.00 x 11). If retirement at age 60, the income will be \$127,584 - \$21,264 x 6. The difference in income is \$106,320. I factor in a contingency differential of 20% this computes to \$85,056.00 - (\$106,320 - \$21, 264). I also factor in 20% for the lumpsum nature of the award. This computes to \$63,792.00 - (\$85,056.00 - \$21,264.00).

[57] The award for loss of earning capacity is \$63, 792.00.

[58] **Summary of Awards**

1.	Special damages for home help	\$	300.00
2.	General damages		
	(a) Pain and suffering	\$	50,000.00
	(b) Loss of amenities	\$	20,000.00
	(c) Future Medical Expenses	\$	100,000.00
	(d) Loss of earning capacity	\$	<u>63,792.00</u>
	Total	\$	234,092.00

CONCLUSION

[59] It is hereby ordered and adjudged that Lennox Israel, the Ancillary Defendant do pay to Maurice Richardson, the Ancillary Claimant, damages assessed as follows:

- (I) Special damages in the amount of \$300.00 with interest thereon at the rate of 3 per cent per annum from the date of the accident, to the date of judgment on assessment.
- (II) General damages for pain and suffering and los of amenities in the sum of \$120,00 with interest thereon at the rate of six per cent per annum from the date of service of the claim to the date of judgment on assessment of damages
- (III) Loss of earning capacity in the amount of \$63,792.00
- (IV) Future medial Expenses in the amount of \$100,000.00
- (V) Costs as prescribed under 65.5 Appendix C as amended and Appendix B.

[60] The judgment attracts interest at the statutory rate of six per cent per annum from the date of the delivery of this judgment to the date of full and final payment.

[61] I commend the industry of Learned Counsel for the Ancillary Claimant and am thankful for her helpful written submissions and authorities.


Pearletta Lanns
Master