

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO. ANUHCV2007/0417

BETWEEN:

EUGENE TEAGUE

Claimant

And

CLAXTON RALPH

Defendant

Appearances:

Mr. George Lake from Lake & Kentish **for the Claimant;**

Mr. Steadroy Benjamin **for the Defendant.**

2010: April 20th;

2010: July 9th.

JUDGMENT

1. **Harris, J.:** This is an action in Negligence resulting in personal injuries to the claimant. It arises out of the collision of two motor vehicles in the city of St. Johns, Antigua. The facts following are taken

substantially from the closing submissions of the claimant. The Claimant is and was at all material times a 36 year old heavy equipment operator/truck driver operating as such for one Bryon Lee, and earning when employed approximately EC\$600.00 per week.

2. On or about the 22nd day of August 2005 at approximately 2:00pm, in the vicinity of the corner of Temple Street and St. Mary's Street in the city of St. Johns Antigua, the Claimant was traveling in a west to east direction on motor cycle R864 and with the benefit of the right of way, when a motor vehicle A16542 owed and driven by the Defendant collided with the Claimant on his motorcycle.
3. The Defendant at all material times was traveling from south to north along Temple Street. The Defendant upon reaching the junction of Temple Street and St. Mary's Street drove through said junction when it was not safe to do so.
4. The collision referred to in paragraph 2 hereof was cause by the negligence of the Defendant.
5. As a result of this collision, the Claimant has suffered injuries.¹
6. As a result of these injuries the Claimant was hospitalized at Holberton Hospital for 16 days and had to undergo a surgical operation under general anesthesia to insert a 'L' plate inside the injured leg.
7. As a result of the said collision the Claimant's motor cycle was severely damaged. The cost to repair the said motor cycle was claimed at \$10,500.00.
8. Followed the Claimant's discharged from the Hospital; he had to undergo out-Patient treatment from 7th September 2005, twice a week until present day – the filing of the Claim. The Claimant at the time of filing the claim was still on sick leave and has been unable to work since the date of the accident.

1. See exhibited copy of medical report dated 24th January 2006 from Holberton Hospital.

9. At the time of the accident, the Claimant was a healthy active young man. He was an avid footballer and cyclist.
10. As a result of his injury the Claimant is unable to play his sport of choice or any sport whatsoever or enjoy the normal activities and amenities of living.
11. As a result of the Defendant's negligence the Claimant has suffered General and Special Damage.

AND the Claimant claims;

1. *Damages*
2. *Special Damages* \$35,392.50
3. *Interest pursuant to section 7 of the Eastern Caribbean Supreme Court Act Cap. 143 from the date of this Claim until payment* \$.....
4. *Legal Practitioner's fixed costs on issue* \$1,200.00
5. *Court fees* \$45.00
6. *Process Service* \$100.00

Such further or other relief as to the Court may seem just;

12. In **Cornilliac v St. Louis (1964) 7 W.I.R 491** Wooding C.J in a judgment which is now often cited, suggested the following criteria for the assessment of general damages:

The nature and extent of the injuries sustained;

The nature and gravity of the resulting physical disability;
The pain and suffering which had to be endured;
The loss of amenities suffered;
The extent to which the Claimant's pecuniary prospects have been materially affected.

13. This judgment, in relation to the General Damages, applies the criteria set out above, *seriatim*

THE CLAIMANTS SUBMISSIONS²

Pain and Suffering

14. This head of damage is intended to compensate both past and future pain and suffering arising from the injuries as well as any surgical operations or treatment.³

15. The claimant refers to his injuries set out in the medical report from the Holberton Hospital.

16. This is a case involving injuries which have ruined the Claimant's life. The Court was invited to consider the range of awards for pain and suffering and loss of amenities in cases of catastrophic injuries⁴.

17. Counsel for the claimant provided what he considers as an equivalent precedent of awards; In the case of Yvonne Miller v. Curtis Charles an Antigua and Barbuda High Court decision Suit No. 469 of 1989 in which counsel for the claimant suggested the Plaintiff suffered similar injuries to her leg; she received \$26,000.00 for General damages. This award was made some twenty years ago.

18. Further, In the case of Ashley Nibbs v. Neil Todman also in this Jurisdiction Suit No. 42 of 1992, The Court found the injury (which counsel submits was nearly identical to that suffered by the Claimant) thus; *"it seems to me that the injury is on the borderline between a serious injury and*

² Taken from the oral and written submissions of the claimant and set out below, as far as possible as presented by the claimant.

³ See Kodilinye, The Law of Torts in the West Indies[sic] cited by counsel for the claimant.

⁴ The Court does not find this injury to be 'catastrophic'.

very serious severe leg injury according to the English Judicial Studies Boards classification and would be worth something like £25,000.00 sterling in England” The court then went on to assess the damages at \$40,000.00 for pain and suffering and loss of amenities.

19. The Claimant invited the Court to award the sum of EC\$65,000.00 under this head of damages.

Future Loss of Earnings

20. This head of damages, submits counsel for the claimant, is meant to compensate a Claimant for money he would have earned during his normal working life, had the accident not occurred.⁵ In this jurisdiction, actuarial or similar professional evidence is not used to calculate this head of damages.⁶

21. Counsel contends that having regard to the nature and extent of the Claimant’s injuries, it is clear that the Claimant's work life has been severely shortened⁷. The Claimant has been out of work since the accident. He can hardly stand and is required to use a crutch in order to stand or move. He cannot put any weight on the limb some three years after the accident⁸. It is unlikely that he will ever be able to resume his career as a truck driver. And as he get older, his ability to have and hold employment will become increasingly more difficult⁹.

22. The defendant alleges that his salary prior to his injuries was a basic pay of \$600/week or \$1800 per month¹⁰. Counsel for the claimant submits that this aspect of the claim should be calculated on the basis of a multiplicand and multiplier.¹¹

23. It is submitted further by counsel, that the multiplicand should be the least amount the Claimant would have been earning in a year if he had continued working without injury¹².

⁵ Sarju v Walker (1973) 21 WIR 86.

⁶ See Heeralall v. Hack Bros (1977) 25 WIR 117.

⁷ There is no medical or other adequate evidence to support this ample contention.

⁸ The severity of this claim was not borne out by observation of the claimant in Court.

⁹ There is no expert medical evidence in support of these contentions.

¹⁰ No evidence led as to statutory deductions being made to this figure.

¹¹ See Heeralall v. Hack Bros (1977) 25 WIR 117.

¹² See Alphonso v. Ramnauth Civ App 1 of 1996 what jurisdiction?

24. The Claimant's salary at the time of his injuries is an appropriate basis for a multiplicand; this would be to calculate an annual figure.

25. Counsel suggests a multiplier of 16 having regard to the Claimant's age and his likely age at retirement¹³.

Special Damages

26. This includes the Loss of income from date of accident to trial.

27. The Claimant has lost his wages from August, 2005 until June, 2008. Some 40 months at \$1800.00 per month for a total of \$78,000.00. The Defendant's counsel tried to imply by his questions that the Claimant did not mitigate his loss by seeking employment. This was denied by the Claimant.

28. The medical expenses claimed is \$3892.00

29. And the Cost of repairs to motorcycle claimed, is \$10,500.00

THE DEFENDANT'S SUBMISSIONS

Contributory Negligence

30. The Defendant alleges contributory negligence and Counsel for the defendant, Mr. S Benjamin, submits the following. It is trite law that in order to establish the defense of contributory negligence, the defendant must prove first that the Claimant failed to take "*ordinary care of himself*" or, in other words, such care as a reasonable man would take for his own safety, and second, that his failure to take care was a contributory cause of the accident.¹⁴

¹³ Determining the multiplier involves a wider range of considerations than 'age' and 'retirement'.

¹⁴ du Parcq L.J. In **Lewis v Denye [1939] 1 AER 310**.

31. The standard of care in contributory negligence is, what is reasonable in the circumstances, which in most cases, corresponds to the standard of care in Negligence. It does not depend on breach of duty to the defendant. It is dependent on foreseeability. Denning L.J said in **Jones v. Livox Quarries Ltd.** [1952] 2QB.608 at page 615:

“Although contributory negligence does not depend on a duty of care, it does depend on foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless.”

32. It is submitted by counsel for the defendant that even though the Claimant had the right-of-way travelling eastwards on St. Mary's Street, he ought to have foreseen that there was a distinct possibility that a motorist could have come through the intersection thereby interfering with his right of way at the said point in time. The Claimant had a duty of care to other road users to include the Defendant and in particular a duty of care for his own safety.
33. Further contends the defendant, it is obvious that the Claimant must have been riding the motor cycle at an excessive speed remembering that the speed limit in that part of the city for that type of scooter Bike was and is 15 mph¹⁵. Testimony was given by the Claimant that he was thrown to the ground as a result of the collision; that the scooter bike skated along the street. That, in and of itself, it is submitted by counsel for the defendant, is an indication of the excessive speed at which the Claimant was riding up the street. The Defendant gave evidence that the Claimant struck the area above the left rear wheel of the vehicle and that as a result of the impact the Claimant was thrown over the low rear portion of the said Claimant's motor car and landed to the east of his motor car. Whichever view the court accepts, the defendant contends that it is clear that the Claimant was riding too fast in the circumstances.
34. Counsel for the defendant submits that the damages to which the Claimant would have been entitled would, nevertheless, have been significantly reduced by his own contributory negligence.

¹⁵ The claimant did not prove this speed limit or direct the court to his source of this fact.

35. The defendant submits further, that in the present case, the Claimant was undoubtedly the part author of his own injury. It is submitted further still, that the Claimant rode his scooter bike into the Defendant's car; that the scooter bike was ridden at significant speed; that the Claimant did not keep any look-out or proper look-out or to observe or heed the presence of the Defendant; that he failed to stop, slow down or do anything to avoid a potential collision until he got too close to the Defendant's car. The Claimant, it is submitted, must take the greater blame for the accident.
36. In the present case, even though the Court were to find and or hold that the Defendant would have been liable in negligence for the collision, counsel for the defendant submits that there was significant contributory negligence and carelessness in the use of the road by the Claimant and for this reason, the damages that result in this action would, it is was submitted, be reduced by 60%, thus awarding the Claimant 40%.

Special Damages

37. Counsel for the defendant cites the case of Ilkin v Samuels 919 (3) 2 ALL ER 879 as authority for the principle that special damages which are generally capable of exact calculation have to be specially pleaded and proved.
38. It is a well established principle of Law that Mr. Teague must prove his case. Counsel submits it is incumbent on the claimant to provide the best evidence of which he is capable. In Cedric Dawson v Cyrus Claxton (BVIHCA 2004/0023) Gordon JA in delivering the judgment of the Court of Appeal in a personal injury case said at paragraph 7: *"I will, however make one comment in passing. It is the obligation of the Claimant in any Claim for the damages to provide the best evidence of which he is capable"*. What do we have here?

Damage to Motor Cycle

39. It is the contention of the defendant that the evidence as to the damage to the motor cycle is or is at its highest, tenuous. The Motor cycle - a scooter bike - was assembled by the Claimant who is

himself a mechanic. The pre-accident value to be found at Exhibit "E.T.2", be it \$15,500.00 or \$5,500.00, it is submitted, is most unreliable to say the least¹⁶.

40. Counsel for the defendant notes that Tasroy Roberts, the individual who prepared the estimate was not called to testify and explain how he arrived either at the pre-accident value of the scooter bike or the present value of the said bike at the time of the accident. It is to be noted further, that the estimate was prepared on the 4th September, 2006, more than one year after the collision.

41. It is not known where the scooter bike was kept and under what condition. The Court ought not to speculate, it is submitted. No evidence was given to assist the court as to the cost of a new scooter bike of that type. Has the Claimant proven this head of Special Damages? The answer suggests counsel, must be in the negative.

Medical Expenses

42. The Claimant claimed \$3,892.50 as medical expenses. The bundle of receipt is to be found at Exhibit "E.T.3"; but in adding up of the amounts in the bundle, it totals **only \$2,802,50**. It is submitted that the Claimant is only entitled to what has been proven specifically.

Loss of Employment from Date of Accident

43. The Claimant testified that he made \$600.00 per week from his employment but in cross-examination that said Claimant testified that the weekly wage earned was obtained when he worked for a full week. Indeed, there were times when he did not work for a whole week. In fact the collision in this matter occurred on a week day when the Claimant did not work.

44. It is submitted by counsel for the defendant that on the evidence taken as a whole, the claim for loss of employment is not sustainable in Law or in fact. The facts show that at all Material times the Claimant was a mechanic - he could have worked but he did not. In short, he did nothing to

¹⁶ paras 56 and 57 *post*.

mitigate his loss. No convincing evidence was given; it is submitted by the defendant, in this regard, to support such a claim.

The Nature and Extent of the Injuries Sustained

45. Mr. Teague was 35 years old at the time of the accident. The evidence disclosed that as a result of the accident the Claimant suffered the following injuries namely **(i)** a Supracondylar Comminuted Spiral fracture of the left Femur with total displacement with a swelling deformity in the lower third of the thigh; **(ii)** abrasion on the anterior aspect of the lower third of the leg; **(iii)** laceration of about 1cm long on the anterior of the knee.

46. The learned authors of Expert Evidence: Law and Practice state:

*“Medical reports prepared for personal injuries litigation are likely to contain both fact and opinion, though much of the factual evidence may presuppose expert knowledge. They will also include, in the usual case, a summary of the plaintiff’s history, **and of his present suffering and disability**, some of which may have been gained from hospital or general practitioner notes, but other parts of which may simply have been given by the plaintiff in response to questions...The mere fact that such material is solemnly recorded by the expert in his report invests it with no more weight unless it is independently proved or agreed”.*

47. The question of the weight to be put on the evidence in these circumstances is a matter for the Court.

The Nature and Gravity of The Resulting Disability

48. Here again and unfortunately, no expert medical evidence was given to assist the Court in considering this head of damage. Apart from the limited flexion of 45% of the ipsilateral knee joint elicited on the Claimant’s visit to the Out-patient Clinic on the 22nd February, 2005, no other expert

evidence is available to assist the Court in this regard¹⁷. The defendant submits that the Court does not have the benefit of the result from further testing or evaluation and therefore cannot speculate.

Pain and Suffering and Loss of Amenities

49. In Wells v Wells, Lord Hope of Craighead observed that:

“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.”

50. Mr. Teague is now 40 years old. He appears to have been an active man and particularly a football player. That apart it is submitted that his quality of life has not been significantly impacted negatively.

51. Counsel for the defendant contends that with respect to Loss of Amenities, it is clear that the Claimant’s way of life has not been severely impaired.

52. Any compensation awarded must be one that is meant to put the Claimant in the same position he would have been in had accident not occurred. In doing so the Court ought to be guided by awards for comparable injuries in this and other jurisdictions having similar social and economic conditions to those prevailing here in Antigua.

53. In the case of Marcel Fevrier et al v Bruno Canchan et al - Saint Lucia Civil Suit No. 313 of 1989 the High Court in St. Lucia in 2002 awarded \$50,000.00 to the First Claimant for pain and suffering and loss of amenities of life for a fracture to his leg, fractures of the toes of both feet, a fracture of the right hip and a fracture of the right knee which resulted in tremendous pain and hospitalization for two months and a further four months at home in bed for most of the time suffering and unable to move around.

¹⁷ The Court also had the benefit of observing the Claimant on two (2) occasions.

THE COURT'S FINDINGS - CONCLUSION

54. The Court accepts the evidence of the claimant as to how the accident occurred as being consistent with logic and the truth. It is not plausible that the defendant could have looked up the street in the direction of oncoming traffic when he said he did, not see the defendant or any traffic and within travelling mere feet, collide with the defendant. After all, the claimant was indisputably there and did collide with the defendant at the junction and with the part of the car that the Claimant alleged he did. The Court rejects the counterclaim of the defendant. I accept the evidence of the defendant that there were cars parked right up on the corner hampering initial visibility for him looking up the street, and for the court's part, also hampering the claimant looking across in the direction of the oncoming defendant. This obstruction, in the court's view, was sufficient to put both parties on alert and caution; particularly the defendant who did not have the right of way. This failure to keep a proper look out or to observe or heed the presence of the claimant by the defendant reflects his negligence¹⁸. The failure to keep a proper look out or heed the presence of the defendant, by the claimant, in the circumstances of the road and traffic conditions of St. Johns and on the evidence, hints at a failure on the part of the claimant to take all such care as a reasonable man would take for his own safety.

55. The court accepts the age and occupation of the claimant as pleaded and testified to. The court accepts that the claimant suffered personal injuries and was hospitalized as pleaded and testified to by the claimant at trial¹⁹. The evidence is supportive of the claimant's assertion that at the time of the accident he lived a healthy active life. He was an avid footballer and a cyclist. The defendant made no attempt to challenge this. The court further finds that as a result of the accident the claimant is not able to play sports of his choice or entirely enjoy the normal amenities of life.

56. Further, the claimant did suffer substantial damage to his motor cycle and sustained other special damage such as his medical bills and loss of employment. The Court is not impressed with the

¹⁸ In addition, the defendant was culpable on each of the categories of the "Particulars of Negligence" set out in the statement of claim at pp7 of the Trial Bundle.

¹⁹ See Trial bundle for supporting documentation.

quality of the proof of the special damage in relation to **(i)** the value of the loss and damage to the motor bike; and **(ii)** loss of employment.

57. The objection to the evidence in support of the **loss and damage to the motor bike** is captured in para. 18 – 20 of the defendant's closing written submissions. The court rejects the evidence of value in support of this claim. The pre-accident value of the motor bike – a 50cc scooter ²⁰ - of \$15,500.00 and the estimate for repairs of \$10,500.00 are simply too high and illogical and does not accord with reason. I note also that the Estimate did not separate out the value of the claimant's input in assembling the bike neither did the claimant attach a value to his labour and expertise. In addition, and as sufficient grounds in themselves; the mechanic who provided these figures did not testify as to its contents; further still, the pre-accident value appears to have the figure “1” uncomfortably inserted before the figure “5,500” in such a manner as calls for an explanation from the maker of the document. That the claimant has suffered loss and damage to his motorcycle is not in doubt and is in the Court's view proved. The unproved value of this loss however, is awarded as a nominal award and is based on the principle set out below.

58. In the case of The Estate of Cyril Thomas Bufton v Lona Eileen Bufton C.A No. 22 of 2004 at para. 22 – 24, Barrow J.A. there said, that it is for the claimant to provide the basis for the court to make an award; even a nominal award. The learned Justice of Appeal continued and held that in the absence of that evidence forthcoming from the claimant, that a court can, however, make a nominal award that is *justifiable on the scale of common experience*.²¹ **Such a nominal special damage award in this case for the motor cycle is in my view the sum of \$5500.00.**

59. The testimony of the claimant with respect to his **earnings at the time of the accident** was severely challenged in cross examination. Again, that the claimant was gainfully employed at the time of the accident is not disputable. The issue is the quantum of those earnings. The evidence bears out that the claimant was not employed full time, although quite regularly. The letter from his employer, Byron Lee, is at variance with the evidence of the claimant himself. The claimant

²⁰ The claimant testified that he personally built the scooter from used parts.

²¹ See also Carlton Greer v Alston's Engineering Sales and Service Ltd P.C. 61 of 2001, Trinidad and Tobago 2003, on the point of awarding nominal damages in the absence of sufficient proof of value of loss and on the meaning of “nominal” damages.

acknowledged the intermittent, albeit somewhat sustained, engagement with Byron lee. The letter from Mr. Biron Lee does not refer to this relationship and wage as being subject to work available. I accept the evidence of the claimant however, that he was employed, albeit in relation to only a four month old employment relationship with Mr. Lee.

60. I note that the medical report exhibited in this matter does not definitively provide; a prognosis for the claimant's recovery and; the extent of the effect his disability to date. The claimant gave evidence of his fruitless efforts to gain employment. He testified that no one wants to hire an injured man as a truck driver or mechanic and that to date he is unable to secure employment as either. His efforts do not, I am afraid, appear to be extensive or continuing. The claimant seems to have taken refuge behind his injury and resigned himself to being unemployable. This leaves the Court in the unenviable position of having to place significant weight on its own observation of the claimant's mobility in the court room at trial when assessing the loss of income from the date of the accident to the date of filing this action and his earning capacity as it relates to his future veracity of his Claim for loss of earnings.

61. The medical report from the Holberton Hospital referred to his left limb being temporarily immobilized from a fracture²². He was operated on, on the 23rd of August – *“open reduction and internal fixation with a L-plate under general anesthesia”*. The Report indicated that the claimant *“had good immediate recovery”* and he was discharged on the 7th November. The report concludes that on the last visit to the out-patient clinic on the 22nd December, *“limited flexion of about 45 degrees of the ipselateral knee joint was elicited”*. He was advised to continue with the physiotherapy. There is no evidence as to whether the claimant took the hospital's advice and continued the therapy. The injury to the left knee joint is the only injury that is identified by the report as significantly remarkable.

62. The Special Damages for the Hospital and medical bills are proved as follows: The 18th January 2006 Holberton Hospital bill covers the period “22 – 8 – 05 to 3 – 9 – 05” ²³ for the sum of

²² This is the only medical report in this matter. The claimant's reference in his pleadings and witness statement to a variety of reports and medical opinions was, at a sub-sequential Chamber Hearing convened by the Court withdrawn as mistakenly pleaded and not applicable to the instant case.

²³ See document “ET3” in Trial Bundle of Exhibits.

\$2572.50. The receipts exhibited thereafter run from October 2005 to February 2006 and amount to \$230.00. **The total proved is \$2,802.50**. The claimant has not claimed and testified to any other medical expenses than that which he has exhibited in the Trial Bundle.

63. On the issue of the claimant's special damages for **loss of earnings from the date of the accident to filing** – 40days; the Court awards the sum of \$1200.00²⁴ per month for a 12 months period, which is reasonable to accept on the evidence, as a period for which the claimant would have been incapacitated, and fixes the sum of \$200.00 per month(diminution in earnings) for the balance of the 40 months i.e. 28 months, to a total of **EC \$20,000.00**

64. On the question of **General Damages – pain and suffering and loss of amenities** -, the several categories of General Damages applied to this case are the oft cited categories set out by Wooding CJ in Cornilliac v St. Louis (1964) 7 W.I. R. 491 and do not need repeating here.

65. The criteria that a judge should apply in the exercise of his discretion on the question of general damages for personal injuries however, is well set out in the Civil Appeal out of St. Vincent and the Grenadines in the case of CCCA Limited v Julius Jeffrey C.A. No. 10 of 2003 SVG and reads as follows:

“...it is, in my view, a function of the law, as far as possible, to be predictable, given the infinite variety of the affairs of human kind. In the context of damages for personal injuries, there are certain principles which apply and there is a discretion which needs to be exercised. In the case of pain, suffering and loss of amenity, that discretion could be wholly subjective and hence unpredictable, or it could be precedent based ; that is to say; the trial judge, having considered all of the evidence led before him, would take into account other awards within the jurisdiction and further afield. Awards of similar injuries would be clearly very helpful in relating the claimant's injuries on a comparative scale. This is not a precise science, leaving much room for the trial judge's discretion”.

²⁴ This represents the gross income of the claimant as determined by the Court, having regard to all the terms and conditions of his employment, the imponderables and the various statutory deductions.

66. This statement of the law is buttressed by again citing the observation of Lord Hope of Craighead in the House of Lords decision in Wells v Wells [1998] 3 ALL ER 481 ante, that : *“The amount of the award to be made for pain, suffering and the 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”*.

67. I have, in the context of Antigua & Barbuda, including the Standard & extent of state subsidized medical care, considered the precedent authorities on quantum along with “Part V, Pelvis, Legs and Feet”, of Daly’s Damages Digest,²⁵ together with the application of the law cited above, in arriving at the award for the General Damages of Pain and Suffering, [and loss of future earnings] and loss of amenities. **I award the sums of \$15,000.00 for pain and suffering and \$25,000.00 loss of amenities.**

68. On the issue of loss of future earnings; assuming that the limited flexion of the knee is a life time affliction (and the claimant has not proved that it is)²⁶; can it reasonably be said that it renders the claimant unemployable for 15 years? In the view of the Court, this cannot be so. If he cannot obtain a job as a truck driver, can he not obtain one as a mechanic or in any other related or peripherally related occupation or indeed in any other income earning activity whatsoever?²⁷ If however, the claimant has permanent or medium to long term damage, even with a greatly improved but not completely healed knee joint, the court understands that undoubtedly his earning potential, he being at the bottom end of the skill continuum, will be somewhat adversely affected. The injury to the knee involves a critical and complex moving body part that carries the weight and movement of the entire body in carrying out even ordinary human activities. However, and regrettably, there is no expert medical evidence before the court with respect to the claimant’s prospects for recovery and/or the extent of the recovery or recovery time, or indeed, his capacity to work in his preferred occupations.

²⁵ See the “Judiciary of the Republic of Trinidad and Tobago” web site. I have made allowances for the 2002 values and the currency exchange rate.

²⁶ On the evidence in this case, the Hospital’s recommendation of continued physiotherapy and care suggests at the very least a prospect of continued improvement if not complete healing.

²⁷ A claimant has a duty to mitigate his loss; for instance, by accepting alternative employment. See Caribbean Commonwealth Tort law, 3rd edit. by Gilbert Kodilinye at pp 387.

69. On what basis does the court calculate the loss of future earnings having regard to the absence of sufficient expert medical evidence and other significant variables in this matter²⁸? Again, one gleans from the evidence and common experience that the earnings of the claimant with a persistent injury of the nature described, who clearly earns a living from physical endeavour would be affected by the injury, thereby attracting at least a nominal award. The Court is not satisfied that the claimant is unemployable even though he claims to date to be unemployed. The Court has to factor in the imponderables; an indefinite future, subject to a myriad vicissitudes and contingencies. No evidence has been led as to whether his income is gross or net – after the statutory deductions such as medical benefits, Education Levy and social security payments. In this jurisdiction, the fortunes of a mechanic and a truck driver are capable of significant fluctuations over time. I note that the claimant had chosen truck driving over employment as a mechanic. What future was there for the claimant either as a truck driver or a mechanic Will the claimant have lived even to see the next day far less the next 10 years? These are some of the imponderables. The claimant is to receive a lump sum now and not periodic payments over time. I reflect that and all the other imponderables in the multiplier. As I said earlier, he is in any event, entitled to at the very least, a nominal sum, and one which in my view contemplates that he is employable and which seeks to top-up the income he is capable of earning in the future so as to as far as possible put him in a position he would have been had he not been injured. The years purchase here chosen, collapses all the considerations into the one multiplier. The Court determines that the claimant's earnings will be reduced by the monthly sum of \$200.00 by virtue of his injury and the consequential lower financial prospects. The Court awards a sum in General Damages of (10Yrs purchase x 200.00/month) = **\$24,000.00 for loss of future earnings.**

70. I also find, for the reasons provided above that the claimant contributed to his loss and Damage to the amount of 10%. This sum is to be deducted from the total damage award.

²⁸ Although in several respects there is minimal or no expert medical evidence to support claims of the Claimant there is testimony from which the Court can draw certain inferences.

71. Interest pursuant to the Supreme Court Act is awarded at 5% per annum on the special Damages award only, from the date of accident to Judgment²⁹. Interest pursuant to the Judgment Act applies to the whole of the Judgment sum from the date of Judgment until full satisfaction.

ORDER

72. For the reasons provided above; **IT IS HEREBY PROVIDED AS FOLLOWS;**

- i. Judgment for the claimant;
- ii. The counterclaim of the defendant is dismissed in its entirety;
- iii. Special Damages award for the claimant in the total sum of \$28,302.00³⁰;
- iv. General Damages award for the claimant in the total sum of \$64,000.00³¹;
- v. The claimant's Contributory Negligence is 10%;
- vi. **Total Damages award less the 10% for contributory Negligence is. \$92,302.50 - \$9,230.25 = \$83,072.25;**
- vii. Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act at 5% per annum on the Special Damages only. Judgment Act Interest on the Total Damage award.
- viii. Costs to the claimant on the CPR 2000 Prescribed Costs scale

DAVID C HARRIS
HIGH COURT JUDGE
ANTIGUA and BARBUDA

²⁹ In **Tate and Lyle Food and Distributor v G.L.C.**²⁹ Forbes J put it thus: “ *I feel satisfied that in commercial cases the interest is intended to reflect the rate at which the plaintiff would have had to borrow the money to supply the place of that which was withheld.*” The instant case is not such a commercial case so as to attract a commercial interest rate as envisaged by Forbes J. I note however, that the authorities on the issue, including the ***Tate & Lyle*** case, make clear that the award of interest on damages is part of the attempt to achieve (*restitute in interim*). Forde J distinguished an award in personal injury cases which included General Damages in relation to what he referred to as including the intangibles such as *pain and suffering and loss of amenity*, from that of an award in commercial cases. He took the view that “*no suggestion could be made that one should envisage the plaintiff in a personal injury case of having to borrow money to take the place of the General Damages which he should have been paid.*” I accept and adopt this view see also Rule 7.0.15, Civil Procedure, Vol. 1, 2000.

³⁰ See body of Judgment for the breakdown.

³¹ See body of this Judgment for the breakdown.