

IN *THE* SUPREME COURT

2011/CLE/GEN/01304

BETWEEN

VALDERINE HENFIELD

Plaintiff

AND

DR. ANTHONY W.D. CAREY

Defendant

Before: ACTING REGISTRAR *EDMUND TURNER*

Appearances: Mr. Dion Thompson and Mr. Max Julien,
for the Plaintiff
Mr. Damien Gomez KC, for the Defendant

Hearing Dates: 31st March 2023, 14th July 2023, 26th July 2023
27th July 2023.

J U D G M E N T

Deputy Registrar TURNER:

Introduction

1. On 7th September 2010 a laparoscopy for pelvic pain dysmenorrhoea, along with a laparotomy was performed by Dr. Carey which resulted in a claim of damages for negligence and a subsequent referral by Justice Ian Winder, as he then was, for the same to be assessed re damages. Please note that regarding this assessment, the Defendant made no

appearance at Court, made no submissions in defense, and attended no case management hearing. A Notice of Hearing was delivered on 22nd February 2023, and signed by Mr. Dwayn Rogers. Counsel for the Plaintiff refers to the conduct of the Defendant in this matter as “a post ruling, vindictive intransigence, intoxicated by blinding professional ego.” This assessment reference issues such as Physical Injury (Scarring), Internal Injury, Psychological harm (PTSD), Chronic Pain, Infertility, Future Damages, and Special Damages. In the final analysis it will be seen that this Court assessed damages to be awarded to the Plaintiff in the amount of **\$1,140,920.40**.

Evidence of Valderine Henfield

2. The Plaintiff was a patient of the Defendant, who carried out a medical practice as a Certified Medical Practitioner, specializing in Obstetrics and Gynecology. On 7th September 2010 a laparoscopy/laparotomy was carried out which resulted in her small bowel being perforated resulting in pain and injury. After the surgery, the Plaintiff noted she had an irregular heartbeat, shortness of breath, rust coloured urine, and she had to be given oxygen. Days later she was diagnosed as suffering from a perforated small bowel, fecal peritonitis and septic shock. As a result, emergency surgery had to be conducted by Dr. Duane Sands, where two (2) inches of the Plaintiff’s small intestine had to be removed. The Plaintiff also noted that she suffered from Post-Traumatic Stress Disorder and had to be seen by Dr. Timothy Barrett, a psychiatrist. The Plaintiff remained in hospital for five (5) weeks, and continues to suffer from abdominal pain, bowel irregularities, and depression.

3. The Plaintiff noted in her evidence that due to her Post Traumatic Stress Disorder, she requires ongoing psychotherapy. This condition has resulted in sleeplessness, tearfulness, fatigue anger, antisocial behavior, and absenteeism from work.
4. In addition, the Plaintiff noted that after weeks of ventilator support she sustained vocal-chord and tracheal damage which resulted in loss of voice and hoarseness.
5. Also, the Plaintiff noted that her Obstetrician Gynaecologist, Dr. Ronald Patterson advised her that due to the surgery, she is unable to conceive naturally. In her Supplemental Witness Statement filed on 31st March 2016, it is seen that the Defendant was aware of the Plaintiff's desire to want to give birth to a child.
6. In addition, and of significance is that the aforementioned Supplemental Witness Statement of the Plaintiff refers to a surgery in 2003 carried out by the Defendant on the Plaintiff involving a diagnostic laparoscopy, mini laparotomy and myomectomy with uterine reconstruction. It is significant to note that within hours of this surgery the Plaintiff had to be rushed into emergency theatre for internal bleeding and complications arising from the surgery carried out by the Defendant on 7th September 2010.

Medical Evidence

7. Please note that the one expert witness for the Plaintiff is Dr. Duane Sands. Affidavits were sworn by Dr. Prescott, Dr. Munnings, and Dr. Barrett (deceased). The aforementioned doctors certified Dr. Sands as competent to give testimony on their behalf. This approach was recommended by the Court

in an effort to 'efficiently streamline' the medical evidence in this assessment. It is also interesting to note that in his report, Dr. Sands makes recommendations re assessed figures for General Damages etc. Please note that the same will be subject to scrutiny by the Court, considering the fact that Dr. Sands is a medical practitioner and not a trained-legal expert. However, considering Dr. Sand's years of experience and expertise, the Court has no issue re figures regarding recommended surgical procedures that the Plaintiff must receive in the future in order to get her back to a healthy and comfortable status in life. It must be noted that in coming to assessment conclusions, it must be recognized that the dominant injury sustained by the Plaintiff is that of **multiple perforations to the small bowel.**

Evidence of Dr. Duane Sands

8. Dr. Duane Sands gave evidence via witness statement dated 19th July 2023. Dr. Sand's evidence noted that he is a Board Certified General Surgeon with sub-specialist qualifications and Board Certification in Cardiothoracic and Vascular Surgery. It is worth noting that Dr. Sands has medical experience and active practice spanning some thirty-five (35) years, and hence he is deemed a Medical Expert in the field of Surgery by this Court.
9. Dr. Sands noted that the Plaintiff suffered from bowel perforation, which resulted in the deterioration of the Plaintiff due to fecal contamination of the peritoneum. Based on evidence given, Dr. Sands noted the following injuries sustained, i.e.
 - a. Tachycardia, which is a rapid rate of the heart;
 - b. Respiratory failure;
 - c. Abdominal compromise, i.e. pancreas, stomach, intestines, liver, gallbladder;
 - d. Septic Shock;

- e. Bowel injury that occasions internal bleeding and significant blood loss;
- f. Peritonitis, inflammation of the internal abdominal wall lining;
- g. Permanent damage to the gastro intestinal tract;
- h. Ventral Incisional Hernia;

Internal Organ Injury

10. Dr. Sand's view is that based on the above, the General Damages Assessment of the internal organ injuries is calculated to be \$96,352.75. Regarding the above, and in making reference to ***The Judicial College Guidelines, 16th Edition***, it is seen that regarding the digestive system,, faecal urgency and passive incontinence persisting after surgery and causing embarrassment and distress, typically following injury normally warrants a figure in the region of £70,000.00 to £79,920.00. The category of Severe Abdominal Injury was referenced by the Court and the same referred to an impairment of function which often necessitated temporary colostomy (leaving disfiguring scars) and or restricting employment and diet. The figure of £44,590.00 to £69,730.00 is normally awarded. The Court in this circumstance awards the figure of £60,000.00 for internal organ injuries, and after conversion, i.e. £60,000.00 x 1.27 = **B\$76,200.00**.

Infertility

11. Regarding the issue of fertility, Dr. Sands referenced Dr. Earle M. Pescatore's professional medical opinion that the Plaintiff is diagnosed as a '**obstetrical cripple.**' In addition, reference was made to the Plaintiff's obstetrician gynecologist Dr. Ronald Patterson, who noted that as a result of the subject surgery, the Plaintiff is unable to conceive naturally, and Dr. Sands believed the same to be true based on the evidence.

12. It can be seen from paragraph 15 of the witness statement of Dr. Sands that his view is that regarding the issue

of infertility, the sum of \$205,238.48 ought to be awarded for general damages. The Court notes that in making reference to *The Judicial College Guidelines, 16th Edition*, it is seen that the level of award depends on, i.e.:

- i). Effect on fertility;
- ii). Whether or not the affected person has children;
and
- iii). Scarring.

13. Based on the evidence in this assessment, it is clear that the Plaintiff had the desire to have children, and the Defendant was aware of the same. Infertility whether by injury or disease, severe depression coupled with pains and scarring warrants an award of £114,900.00 to £170,280. In the current circumstance £150,000.00 would be an appropriate sum. In converting the same to dollars, we would arrive at the figure of £150,000.00 x 1.27 = **\$B 190,500.00**

14. Of particular note is Dr. Sand's 'bedside manner' approach to the practice of medicine that enables him to understand that chronic pain can be a direct consequence of initial injuries, pain resulting from surgery, and pain that persists as postoperative results. Reference was also made to the report of Dr. Barrett dated 22nd February 2021, where particular reference was made to the Plaintiff's suffering physically, mentally, socially, and psychologically as a result of the misdiagnosis and mismanagement by the Defendant. Dr. Sands agrees with Dr. Barrett that the Plaintiff, as a result of the perforated bowel experienced **Post Traumatic Stress Disorder**, hallucinations, unsettling memory problems, deteriorating mentally, emotionally, with an unsettling feeling of helplessness and hopelessness.

Chronic Pain

15. Dr. Sands noted that Chronic Pain is inescapable as prescriptive to the medical facts of what the Plaintiff experienced. He noted that there is a direct correlation between pain and psychological dysfunction as illustrated by Dr. Barrett. As a result, Dr. Sands agrees with general damages assessment for chronic pain and PTSD calculated at \$200,000.00 and \$120,000.00 respectively. The Court however, in making reference to ***The Judicial College Guidelines, 16th Edition***, notes that the level of award for Chronic Pain is characterized by subjective pain without any, or any commensurate organic basis. Figures given assume causation re relevant symptoms established. As a result, for Chronic Pain the figures £28,030.00 to £52,500.00 is normally awarded. In the current circumstance, the Court awards £50,000.00 or after conversion, i.e. £50,000.00 x 1.27 = **B\$63,500.00**.

Post-Traumatic Stress Disorder (PTSD)

16. For Post-Traumatic Stress Disorder, and in making reference to ***The Judicial College Guidelines, 16th Edition***, it is seen that considering the current circumstance, the same falls between the severe to moderately severe category. As a result, the figure of £59,860.00 to £100,670.00 would be awarded in the current circumstance. The Court awards some £70,000.00 and after conversion, i.e. £70,000.00 x 1.27 = **B\$ 88,900.00**. It is to be noted that Counsel for the Plaintiff made reference to the case of **Myles v. McQuillan & Anor**, for which no citation was provided, neither was a copy of the same provided within the closing submissions. Towards this end, the aforementioned authority was referenced and the said figure arrived at.

Scarring

17. In addition to the psychological scarring as seen above, Dr. Sands also referenced physical scarring as well, particularly regarding incisional hernia surgical repair. It is noted that the same made the Plaintiff feel unattractive and inadequate in a relationship. Dr. Sand's view is that \$27,407.00 ought to be awarded as general damages for the same. The Court in making reference to ***The Judicial College Guidelines, 16th Edition*** notes the same involves a single disfiguring scar which will normally attract an award figure between £7,830.00 to £24,730.00. Reference is made to the fact that scarring can refer to devastating physical and emotional problems, and there is evidence that the Plaintiff suffered from the cruel residual effects of invasive medical procedures. In the current circumstance, the Court awards the sum of £20,000.00, or the figure of **\$B 25,400.00** after the conversion from pounds to dollars. Sad to say, reference was made to paragraph 13 of The Honourable Chief Justice's ruling, but the same was not provided to this Court for assessment purposes.

Post-Operative Care

18. It is noted by Dr. Sands that the Plaintiff will require post-operative care. He noted that the Plaintiff's symptoms and possible second hand maladies, which may develop from a direct correlation to her original injuries, will persist for a lifetime. The Plaintiff as a result will have to be placed consistently on prescribed medications as she also suffers from Bile Acid Malabsorption, according to Dr. Munnings. Also, the Plaintiff suffers from chronic diarrhea. According to Dr. Munnings, the Plaintiff will require daily antihypertensive therapy, and the aforementioned symptoms will last a lifetime.

19. Dr. Sands noted, the Plaintiff is at risk for the progression of ventral incisional hernia, which will require mesh reconstruction of the abdominal wall. Dr. Sands describes this procedure as a necessary one to restore the abdominal wall of the Plaintiff. This procedure is noted to be lengthy, and will require general surgical intervention as well as plastic surgical intervention. This procedure will cost some **\$60,000.00 to \$75,000.00**. The Court in this circumstance awards the later figure.

Vocal-Chord and Tracheal Repair

20. In addition to the above, the Plaintiff as a result of weeks of ventilator support suffered from post-intubation vocal-chord and tracheal damage. As a result, she suffers from weakness, loss of breath, and loss of voice. Dr. Sands noted the evaluation will cost **\$5,000.00**, and the surgery will cost **\$25,000.00 to \$30,000.00**. The Court considering the circumstance, has no issue with the figure of **\$30,000.00** being awarded.

Small Bowel Obstruction

21. Also, Dr. Sands noted the risk of post-laparotomy, adhesive small bowel obstruction, which may require a re-do surgical exploration. He noted the risk is at 20%, the typical costs for hospital and physician fees exceed \$50,000.00. The same, less 80% comes to **\$10,000.00** according to Dr. Sands. Once again, having regard to Dr. Sand's expertise in the field of medicine, the Court has no issue with this figure.

22. The assessing Court laments the fact that reference is made to case law that is incomplete. In this particular circumstance the case of **Green v. Hardiman** [2017] IEHC 17, is referenced, but sad to say the case is incomplete as the page after the introduction is missing.

Totals

Reproductive System, Female	\$B	190,500.00
Chronic Pain	\$B	63,500.00
Post-Traumatic Stress Disorder	\$B	88,900.00
Scarring	\$B	25,400.00
Mesh Reconstruction of Abdominal Wall	\$B	75,000.00
Vocal Chord Damage		
i). Evaluation	\$B	5000.00
ii). Surgery	\$B	30,000.00
Re-do Surgical Procedure post-laparotomy, adhesive small bowel obstruction	\$B	10,000.00
Internal Organ Damage	\$B	76,200.00

Total: \$B 564,500.00

Special Damages

22. It is seen in the Concurrent Writ filed 3rd February 2012 that the Plaintiff specifically pleads Special Damages for the following, i.e.:

Doctor's Hospital Bill	\$172,663.56
Doctor's Hospital Deposit	\$4,500.00

Doctor's Hospital Deposit 10/09/2012	\$3,000.00
Doctor's Hospital 23/10/2010	\$1,500.00
Doctor's Hospital Anaesthesiologist	\$800.00

Total: \$ **182,463.56**

Dr. Anthony Carey Deposit 2/9/2010	\$4,000.00
Dr. Anthony Carey	\$24,000.00
Dr. Carey Injection 23/08/2010	\$10.00
Dr. Carey Office Visit	\$120.00
Dr. Carey Hysteroscopy	\$1,000.00

Total: \$ **29,130.00**

Princess Margaret Hospital 26/10/2010	\$662.64
Dr. Duane Sands	\$34,000.00
Dr. Reginald Neymour and Barrett McCartney 6/9/2010 to 20./5/2011	\$28,652.00
Dr. Patrick Cargill	\$14,000.00
Dr. Srikanth Garikaparthi 16/09/2010 to 17/9/2010	\$7,550.00
Dr. James Inferenta 31/12/2012	\$3,629.00
Dr. Kevin Moss	\$1,400.00

Total: \$ **89,893.64**

Dr. Robert Ramsing	\$200.00
Dr. Robert Ramsing 17/11/2010	\$120.00

Total \$ **320.00**

Dr. Timothy Barrett	\$1,250.00
Dr. Timothy Barrett 13/9/2010	\$ 250.00

Dr. Timothy Barrett	16/09/2010	\$150.00
Dr. Timothy Barrett	18/09/2010	\$150.00
Dr. Timothy Barrett	2/09/2010	\$150.00
Dr. Timothy Barrett	5/10/2010	\$150.00
Dr. Timothy Barrett	18/02/2011	\$150.00
Dr. Timothy Barrett	18/03/2011	\$100.00
Dr. Timothy Barrett Medical Report		\$500.00

Total: \$ **2850.00**

Kelso Lab	2/09/2010	\$270.00
Kelso Lab	2/06/2011	\$441.00
Kelso Lab	7/06/2011	\$80.00
Kelso Lab	26/09/2011	\$170.00

Total: \$ **961.00**

Dr. Patterson	19/10/2011	\$75.00
Dr. Patterson	19/10/2011	\$200.00
Dr. Patterson	1/06/2011	\$475.00
Dr. Patterson	6/07/2011	\$75.00

Total: \$ **825.00**

Dr. Riley Butler	3/10/2011	\$130.00
Dr. Riley Butler	9/11/2011	\$94.00

Total: \$ **224.00**

Dr. Winston Campbell	26/09/2011	\$ 200.00
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Miscellaneous

Fourth Terrace Diagnostic Centre	02/06/2011	\$503.00
Integra MRI	29/09/2011	\$1,900.00
Medication		\$100.00

Doctor's Hospital Medical Report	\$20.00
Bahamas Business Solutions	\$110.65

Total: **\$2633.65**

Past Loss of Earnings – salary deductions	\$2,500.00
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TOTAL: \$312,000.85

Prescription Expenses

23. In referencing the Plaintiff's Addendum Report for Special Damages, it is seen that between 11/24/2020 and 3/20/2023 some **\$4,555.27** was spent re prescriptions etc. This is in contrast to the figure of \$4,373.17 calculated by Counsel for the Plaintiff. The Pharmacies listed included Pharma Choice Ltd, Lowe's Pharmacy, The People's Pharmacy, Doctor's Hospital Pharmacy, Centre for Digestive Health, Walk in Clinic, Doc's Pharmacy, The Medi-Centre, and The Prescription Parlour Pharmacy.

Additional Addendum of Special Damages

24. Since submissions were filed on 22nd March 2023 the Plaintiff has continued treatment which includes Prescription and Doctor/Medical Service Expenses. The particulars of the same are as follows, i.e.:

a. Prescription Expenses	\$748.50
b. Doctor/Medical Service Expenses	\$2,629.80

Total: **\$3,378.30**

Overall Totals

General Damages	\$564,800.00
Special Damages	\$312,000.85
Additional Prescription Expenses	\$4,555.27
Addendum of Special Damages	\$3,378.30

Total: \$884,434.42

Interest

25. The law relating to the payment of interest on judgment debts is the Civil Procedure (Award of Interest) Act, 1992. Section 2 of the Civil Procedure (Award of Interest) Act provides that:

“2. (1)Every judgment debt shall carry interest at such rate as shall be prescribed by rules of court made by the Rules Committee constituted by section 75 of the Supreme Court Act levied under a writ of execution on such judgment:

Provided that nothing in this section shall apply in relation to any Judgment debt upon which interest is payable as of right, whether by virtue of an agreement or otherwise.

26. The rate of interest payable on judgment debts is provided for under Rule 2 of the Civil Procedure (Rate of Interest)Rules, 2008, which provides that:
- a. **“For the purpose of section 2(1) of the Civil Procedure (Award of Interest) Act, the rate of interest is the prime rate of the Central Bank plus two per per centum per annum.”**
27. As of the date, the current prime rate of the Central Bank as published on its website at <https://centralbankbahamas.com> is 4.25% per annum. As a general rule, interest runs from the time the judgment is pronounced-the incipitur rule as was recently affirmed by the Privy Council in **Rajesh Ramsarran v. The Attorney General of Trinidad and Tobago** Privy Council Appeal No. 18 of 2004.
28. Accordingly, interest payable on the damages as taxed is 4.25% per annum plus two per centum per annum which totals 6.25% per annum from the date of the Order being given by Justice Fraser, until payment in full.
29. Interest is accruing on outstanding damages in accordance with the provision of the Civil Procedure (Award of Interest) Rules at the rate of 6.25% per annum since the

date of the judgment. Considering the date of judgment is 2nd April 2019, just about five (5) years have passed thus far. Therefore $4.75 \times 6.25 = 29.68$, $29.68/100=0.29$. Taking the aforementioned figure of **\$884,434.42** and multiplying the same with 0.29, we get the figure of **\$256,485.98**. Therefore, adding the same to the \$884,434.42 we get **\$1,140,920.40** interest inclusive.

Edmund Turner
Acting Registrar
30th January 2024