

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW & EQUITY DIVISION
2017/CLE/GEN/01486

BETWEEN

DAQUILLE MISSICK
aka DAQQUILLE HANNA
aka BENNETT HANNA

Claimant

AND

CHI KEUNG YUEN
(Trading as Canton House Chinese Restaurant)

Defendant

Before: ACTING REGISTRAR *EDMUND TURNER*

Appearances: Mr. Byron Woodside for the Claimant; and
Mr. Donovan Gibson for the Defendant

Hearing Dates: 17th December 2022, 13th September 2023, 29th
September 2023, 7th December 2023, and 22nd January 2024.

J U D G M E N T

Acting Registrar TURNER:

Background

1. The Claimant in this action commenced proceedings via Specially Indorsed Writ of Summons filed on 18th December

2017, claiming personal injury, loss and damage. The Defendant entered an appearance to the Claimant's Claim by Notice and Memorandum of Appearance filed 13th January 2020. The Defendant failed to file a Defense and the Claimant then entered Judgment in Default of Defense on 17th May 2022. By Notice of Appointment of Assessment of Damages filed 5th August 2022, the Claimant sought to have its damages assessed.

Evidence

2. The evidence produced on behalf of the Claimant comprised his testimony and the evidence of Dr. Colleen Fitzcharles-Bowe. It is important to note that the aforementioned evidence was not challenged by the Defendant.

The Law

3. It is seen in the case of **Livingston v. Reynolds Coal Co.** 5 App Case 25, per **Lord Blackman** defined damages as, i.e.:
'that sum of money which will put the party who has been injured or who has suffered in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation.'
4. Reference is also made to the case of **Nippon Yusen v.**

Acme Shipping Corporation [1972] 1 WLR 74 CA. In this case it is seen that damages were not limited to the physical, they also included financial loss. In addition, an award of damages is not intended to put the Plaintiff in a better position than what he would have been in had the injury, loss, or damage not occurred.

5. The general principle is that he who asserts must prove, and hence the burden of proof is on the Claimant to demonstrate that the damage suffered and the amount he is seeking to recover is due on the balance of probabilities. Reference can be made to the case of **Mullings v. Williams and another** [2014] 1BHS J. No. 135. As a result, a failure to prove a claim for any loss would reduce the Claimant's award of compensation.

General Damages

Pain, Suffering, and Loss of Amenities

Burns

6. The Claimant suffered burns to his upper body. Reference is made to the ***Judicial Studies Board Guidelines, 16th Edition***, Chapter 11, which refers to scarring of parts of the body. It highlights that burns are not dealt with separately and will be assessed based on inter alia, "degree of severity" disfigurement, pain and any physical or psychological injuries.

Chapter 11 makes reference to factors that influence the size of the award in burn cases, and considering burns covering 40% of the body, compensation is likely to exceed £104,830.

7. The Claimant suffered second degree burns to 21-30% of the upper body which required a split-thickness skin graft. Counsel for the Claimant references **The Judicial Council, Personal Injuries Guidelines of March 2021** (seen at Para 28 of Claimant's Closing Submissions), where it notes, i.e.:

'Where significant burns cover 40% or more of the body awards are likely to exceed £200,000.

8. There is evidential fact that the Claimant's upper body remains nearly fully scarred from the burns he received and medical reports show that the burn scarring covers up to 30% of his body. The Court is of the view that, considering the fact that damages from burns received by the Claimant should approximate at last two thirds (2/3) of the £200,000 (\$201,590.76), in today's figure. As a result, I agree with Counsel for the Claimant that a reasonable sum, after considering the authority of **Weinberger v. Jacobs**, where at the time in 1998 some £28,630.00 (£80,482.70 in today's money), is **BSD\$80,482.70** for general damages re burns received by the Claimant.

Dermatitis

9. The Claimant also submits a claim for Dermatitis, which he will suffer from, for the rest of his life. In the evidence of Dr. Fitzcharles-Bowe, she refers to Dermatitis on the Claimant's right chest and right arm. In making reference to **Kemp and Kemp**, the Quantum of Damages Volume 3 at JSB-076, the Claimant is seeking the sum of BSD\$15,170.40. Pursuant to rule 8.7(1) of the Supreme Court Civil Procedure Rules, 2022, it is seen, i.e.:

“The Claimant must include in the claim form or in the statement of claim a statement of all the relevant facts on which the claimant relies.”

10. The Court is of the view that the Claimant should not be entitled to this claim as he failed to plead this damage as the Defendant had no notice of the same. As the Claimant is bound by his pleadings, his failure to provide particulars of this claim should prevent an award under this head of damages.

Loss of Earnings

11. At the time of the accident, the Claimant was working for the Defendant earning \$200.00 per week. As a result of the accident, the Claimant was unable to work for nine (9) weeks,

and lost \$1,800.00 in earnings. Given the fact that the Claimant was unable to claim National Insurance benefits due to insufficient contribution, the Court awards the Claimant **\$1,800.00** for loss of income.

Nursing Care

12. The Claimant is claiming \$210.00 per week for nine weeks of assistance provided by his mother following his discharge from hospital. In the case of **Housecroft v. Bennett** [1986] 1 All ER 332 the Court had to determine how damages for care provided by the Plaintiff's mother should be calculated. The Court in this case held two extremes, i.e. award full commercial costs for providing the service, or award nothing. The commercial cost is provided to a third party, who gives up paid employment. The Claimant's failure to provide evidence of his mother abandoning paid employment to care for him, is entitled to recoup at least something for the cost of this care. The Court in this circumstance will award the sum of **\$125.00**.

Special Damages

13. The Claimant produced invoices from the Princess Margaret Hospital dated the 19th December, 2015 (\$190.00), and the 29th March 2016 (\$3,079.68). As a result the Court has no issue awarding the sum of **\$3,289.68**.

14. The Court is of the view that a reasonable sum for damages in total is **\$85,697.38**. The same is arrived at as follows, i.e.:

Pain, Suffering, Loss of Amenities	\$80,482.70
Loss of Earnings	\$1,800.00
Nursing Care	\$125.00
Special Damages	\$3,289.68
	Total: \$85,697.38

15. In the circumstance, the sum of **\$85,697.38** is reasonable compensation for the Claimant for the personal injury, loss, and damage suffered.

Interest

16. 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.

17. 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.”**
18. 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.
19. 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.
20. 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 Default is 17th May 2022, just about one year and nine months have passed

thus far. Therefore $1.9 \times 6.25 = 11.87$, $11.87/100 = 0.118$. Taking the aforementioned figure of **\$85,697.38** and multiplying the same with 0.118, we get the figure of **\$10,112.29**. Therefore, adding the same to the **\$85,697.38** we get **\$95,809.67** interest inclusive.

21. In considering interest from the date of injury, to the date of judgment, i.e. some eight years, therefore the same would be at the lower interest rate of 3%, or $\$2,571.00 \times 8 = \$20,568.00$. As a result, we arrive at a grand total of $\$20,568.00 + \$95,809.67 =$ **\$116,377.67**, total in damages.

Edmund Turner
Acting Registrar
4th March 2024