

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW & EQUITY DIVISION
2017/CLE/GEN/00803**

BETWEEN

KENNETH THOMPSON

Plaintiff

AND

GOLF STREAM FOOD SERVICES LIMITED

1st Defendant

and

ORAL SCOTT

2nd Defendant

Before: DEPUTY REGISTRAR *EDMUND TURNER*

Appearances: Ms. Judith Smith for the Plaintiff; and
Mr. Valentino Hamilton for the Defendants

Hearing Dates: 4th July 2023, 26th October 2023, 1st November 2023, 20th
February 2024, 1st March 2024, 15th April 2024, and 13th May 2024.

J U D G M E N T

Background

1. On 4th November 2016, the Plaintiff who was fifty two (52) years old at the time, was driving his vehicle when he was struck by a vehicle owned by the 1st Defendant, and driven by the 2nd Defendant. On 15th September 2022 the 1st Defendant admitted liability and the matter was adjourned to be heard before a Registrar for an assessment of damages.

2. Injuries for which the Plaintiff is seeking Pain, Suffering and Loss of Amenity

- a. Soft tissue injury to the neck, left lower abdomen, and lower back;
- b. Mild traumatic brain injury (concussion);
- c. Post-Concussion Syndrome;
- d. Cervical and Lumbar discogenic disease with herniated discs;
- e. Discogenic Disease, spondylosis and diffuse posterior disc bulges throughout the cervical spine, C6-C7;
- f. Mild degree of neural foraminal stenosis bilaterally at C3-C4 and C4-C5;
- g. Mild degree of central canal spinal stenosis at C5-C6 with moderate degree of neural foraminal stenosis bilaterally;
- h. Mild to moderate degree of central canal spinal stenosis at C6-C7

with moderate to severe degree of neural foraminal stenosis bilaterally;

- i. Moderate degree of neural foraminal stenosis bilaterally at C7-T1;
- j. Mild discogenic disease, spondylosis, diffuse posterior disc bulges and a mild degree of facet joint osteoarthropathy bilaterally at L4-L5 and L5-S1;
- k. Broad based left sided HNP impressing upon the thecal sac and extending into the left recess at L4-L5;
- l. Compression of the left L4 and left L5 nerve roots; and
- m. Central left paracentral radial annular tear at L5-S1.

3. The Plaintiff noted that after the accident he immediately experienced back pain, headaches and dizziness. He was unable to sleep, experienced dizziness, and experienced numbness and tingling on the left side. The Plaintiff also noted that sometimes his left side would just collapse. The Plaintiff also complained of his sex life being affected. He also complained of memory loss as individuals kept telling him he was repeating himself. It is of significance to note that a non-invasive surgery was carried out by Dr. Brusovanik and the Plaintiff felt considerably better but did not have total relief.

4. Due to the lower back pain, the Plaintiff notes that he is unable to carry out strenuous work, climb ladders or bend a lot, and these aforementioned actions were integral to his job. The Plaintiff is an

electrician, whose job is to principally work on generators, and he is the owner of his own business. As a result of the aforementioned injuries, the Plaintiff cannot participate in church processions and Lodge marches. His memory continues to be affected, as well as the quality of his sex life.

Special Damages

5. In the matter at hand the Amended Statement of Claim seeks Special Damages as follows, i.e.:

a. Miami Back & Neck Specialists Surgery	\$76,698.00
b. Doctor's Hospital	\$4,633.11
c. Doctor Olu Tinubu Medical Report	\$750.00
d. Neurosurgical Institute of The Bahamas	\$107.50
e. Baptist Health South of Florida	\$85.00
f. The Prescription Parlour	\$141.48
g. Medication	\$148.72
h. Open MRI	\$21.50
i. Spectrum Management	\$189.55

Travel Expenses

a. Airline Tickets	\$1,384.15
b. Rental Car Fees	\$176.17
c. Hotel Accommodations	\$336.74

Auto Repair \$12,559.11

Miscellaneous

a. Taxi Fare	\$100.00
b. Fedex of MRI CD	\$37.00

Total: **\$97,368.03**

6. Special Damages must not only be specifically pleaded, but must also be proved as well, see **Shutt v. Island Construction Co.** per *Sawyer J.* The aforementioned view re Special Damages is recognized in law, and the fact that *‘any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of witnesses orally and in open court.’* In addition, reference can be made to the case of **Garland v. Perez and General Rent-a Car (Bahamas) Limited** BS 1995 SC74 where reference was made to **Ikiw v. Samuels** [1963] 2 All E.R. 879 per Lord Diplock at pg. 890, i.e.:

‘Special damage in the sense of monetary loss which the Plaintiff has sustained up to the date of trial must be pleaded and particularized, otherwise it cannot be recovered in my view...one can recover in an action only special damages which has been pleaded, and of course, proved.’

7. There is argument by Counsel for the Defendant challenging the reasonableness of the cost of the surgery noted in (a) above. Evidence from the Claimant is that if the surgery was performed locally, it would

have cost \$88,000.00, and the Plaintiff would have to learn to walk again, and this would take a year to a year and a half. The surgery performed on the Plaintiff allowed him to begin to walk and eat immediately. As a result, it is argued that it was reasonable for the Plaintiff to elect to have the non-invasive surgery. The total charge for the surgery was \$102,060.00, the insurance payments were \$24,578.00 and the patient balance was some \$76,698.00. The Plaintiff is only seeking to recover only the patient's portion, and the Court is of the view that the same is not unreasonable in the circumstance, and considering the recommendations of Dr. Ekedede and Dr. Brusovanik.

8. The aforementioned legal criteria having been met, the Plaintiff is entitled to some **\$97,368.03** in Special Damages as opposed to the figure of \$97,368.43 noted by Counsel for the Plaintiff in her submissions.

General Damages

9. It is important to note that in considering General Damages and in particular in making reference to the Medical Evidence in this matter it is important to note that the parties agreed to lay over the medical reports and waive calling the medical doctors. The Plaintiff's medical reports were not objected to by Counsel for the Defendant, and the Defendant provided the Court with a medical report to which the Plaintiffs had no objection.

10. Counsel for the Plaintiff makes reference to the authority of **Bacon v. Brown** [2015] 3BHS J. No. 38 where s. 62(3) of the Evidence Act lists considerations that are relevant in considering and assessing the weight to be given to hearsay evidence, including the contemporaneity of the statement and the incentive of the maker of the statement to conceal or misrepresent the facts.

11. Counsel for the Plaintiff also referenced the case of **Colina Imperial Insurance Co. v. Enos Gardiner**, where the Court of Appeal discussed the inclusion of documents in an agreed document. The inclusion of a document in an agreed trial bundle, in accordance with Supreme Court Practice No.2 means it is admitted in evidence before the judge by agreement, with the party wishing to rely on it not having to call a witness to formally produce it or to authenticate it. In addition, reference is made to Sections 41 and 43(3) respectively of the Evidence Act which permits secondary evidence of a document to be given inter alia through the oral accounts of the contents of a document given by a witness who has seen the document. Hence the evidential basis by which Counsel for the Plaintiff has established its case is based firmly and properly in evidential law.

12. The Court is advised and agrees with Counsel for the Plaintiff to give more weight to local decisions versus ant submission using the Judicial Studies Board Guidelines. The Privy Council case of **Scott v. the Attorney General et al** [2017] UKPC 15 para 25 notes, i.e.:

The Bahamas must likewise be responsive to the enhanced expectations of its citizens as economic conditions, cultural values and societal standards in the country change. Guidelines from England may form part of the backdrop to the examination of how these changes can be accommodated, but they cannot of themselves provide the complete answer...Guidelines from different jurisdictions can provide insight but they cannot substitute for the Bahamian Courts' own estimation of what levels of compensation are appropriate for their own jurisdiction.

13. As a result, reference is made to the case of **Ryan Strachan v. Raynor Russell et al 2019/CLE/gen/001461**. In this case the Claimant developed severe headaches, whiplash gliosis of the brain, closed head injury with cerebral concussion, post traumatic headaches. Cervical radiculopathy secondary to multilevel herniated nucleus/bulging discs at C4-C5. He experienced limited mobility and was unable to stand for prolonged periods or walk for long distances with pain due to sustained lumbar injuries. He was 40 years old and was a project manager of a construction company. Deputy Registrar Toote awarded \$100,000.00.

14. Reference was also made to the case of **Gibson v. Public Health Authority [2005] 5BHS J 298**. In this case a female nurse aged 47 sustained injuries in an industrial accident which resulted in neck and back injuries, as well as closed head injuries associated headaches and vertigo. The doctors in this case assessed the Plaintiff with 35%

disability. Justice Gray-Evans awarded the plaintiff \$55,000.00 for pain suffering and loss of amenities.

15. In the current circumstance, the Court is in agreement with Counsel for the Plaintiff regarding the award of the sum of **\$75,000.00**, for pain, suffering, and loss of amenities.

Totals

16. a.	General Damages, i.e. Pain, Suffering, Loss of Amenity	\$75,000.00
	b. Special Damages	\$97,368.03
	c. Costs	\$50,823.35
		Total: \$172,368.03

Interest

17. 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 of otherwise.

18. 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.”

19. 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.

20. 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 Brathwaite, until payment in full.

21. 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 admission of liability and referral to assessment by Justice Brathwaite. Considering the date of admission of liability being 15th September 2022, just about one year and eight months have passed thus far. Therefore $1.8 \times 6.25 = 11.25$,

$11.25/100=0.1125$. Taking the aforementioned figure of **\$172,368.03** and multiplying the same with 0.1125, we get the figure of **\$19,391.40**. Therefore, adding the same to the \$172,368.03 we get **\$191,759.43** interest inclusive.

22. In considering interest from the date of injury, to the date of judgment, i.e. some five years and ten months, therefore the same would be at the lower interest rate of 3%, or $\$5,752.78 \times 5.10 = \$29,339.17$. As a result, we arrive at a grand total of $\$29,339.17 + \$191,759.43 = \mathbf{\$221,098.60}$ total in damages.

Costs

23. Counsel for the Claimant is seeking costs of \$50,823.35 re legal fees and disbursements for trial liability and the assessment of damages. It is important to note that on 15th September 2022, at the pre-trial review before Brathwaite J., the defendant admitted liability. It is also noted that costs follow the event, and in the spirit of the new Civil Procedure rules, costs are to be dealt with expeditiously by the Court. As a result, the Court is minded to award costs in the amount of **\$50,823.35** to Counsel for the Plaintiff.

24. In the final analysis, it can be seen that adding the aforementioned costs of $\$50,823.35 + \$221,098.60$ we get a grand total of **\$271,921.95**.

Edmund Turner
Deputy Registrar
13th May 2024

