

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW & EQUITY DIVISION
2007/CLE/GEN/00221

BETWEEN

KEVIN COLLIE

First Plaintiff

and

WAYNE COLLIE

Second Plaintiff

AND

ANDREW JOHNSON

First Defendant

and

LOUIS MAJOR

Second Defendant

Before: DEPUTY REGISTRAR *EDMUND TURNER*

Appearances: Mr. Gregory Armbrister for the Plaintiffs; and
Mrs. Lisa Bostwick Dean for the Defendants

Hearing Dates: 9th July 2021, 16th November 2021, 1st December 2021, 15th December 2021, and
9th March 2022.

Negligence, Causation, Remoteness of Damages, Assessment of damages-Injury to spine after Vehicular Accident-Subsequent two Vehicular Accidents-General Damages-Pain, Suffering-Loss of Amenities-Special Damages- Future Deterioration-Loss of Congenial Employment-Medical Treatment-Medication-Interest.

Brief Facts

On the 11th day of February, A.D. 2005 at about 7:30 a.m., the First Plaintiff, who at the time was forty four (44) years of age, now age sixty three (63), was driving his motor vehicle, a 1996 Mazda Capella, Registration No. 123746 north along East Street, with the Second Plaintiff, as a passenger,

when the truck he was driving was struck from behind by a public transportation bus no. N.P. 86 driven by the First Defendant as a servant or agent of the Second Defendant. As a result, the First and Second Plaintiff sustained injuries, and the matter at hand must be assessed re damages. Please note that an added complexity to the assessment at hand is the fact that the First Plaintiff suffered injury from two (2) subsequent accidents (one in 2009 and another in 2011 resulting in a whiplash injury and resulted in neck and lower back pain, which contributed to **Chronic Pain Syndrome**) after the accident, which is the subject of this assessment, and prior to the completion of the assessment at hand.

Held: The matter at hand after consideration of the relevant evidence, and factoring in interest has been assessed and the figure of **\$40,174.25** has been arrived at.

Cases Referenced: Icilda Osborne v. George Barsed, Metropolitan Management, Transport Holdings Ltd, and Owen Clarke, No. 2005 HC V 294, Baker v. Willoughby [1970] AC 467, Jobling v. Associated Diaries Ltd. [1982] AC 794, Shorn Scott (A.K.A. Shawn Scott) v. Attorney General 2017 UKPC 15, PC Appeal No. 0042 of 2016, Rajesh Ramsarran v. The Attorney General of Trinidad and Tobago Privy Council Appeal No. 18 of 2004, Matthews v. O'neal (2018) 92 WIR 374, Ruffin Crystal Palace Ltd. v. Laniccini Brathwaite SCCiv & CAIS No. 96 Of 2011, Lunnun v. Singh and others [1999] EWCA Civ 1736.

J U D G M E N T

Challenge re Availability of Transcripts

1. This Assessment had its challenges, and one of which was the availability of the transcripts in this matter from the Court Reporting Office. Please note that initially, I wrote on the following dates regarding this issue, but to no avail, i.e. Memorandum to Judith Clare dated 9th March 2022, Minute No. 15 to Registrar of Supreme Court, E-mail to Judith Clare dated 28th July 2022, and Memorandum to Judith Clare dated 16th November 2021. Please also note that concerns regarding this issue spanned some two (2) Chief Justices, and two Supreme Court Registrars. It was not until about March 0f 2024, that my secretary at the time, and I were introduced and trained in ‘voice over IP technology, which greatly assisted in the receipt of timely transcripts, which facilitated timely rulings regarding assessments. Sad to say, this training took place after evidence in this

matter was given by numerous doctors etc., and Zoom Recordings that were made and sent to the Court Reporting Unit on numerous occasions, could not be transcribed and provided to Counsel in this matter. As a result, the Court adopted the approach of the Court of Appeal from years ago and had to provide the Deputy Registrar's hand written notes regarding the dates of 16th November 2021, 1st December 2021, 15th December 2021, and 9th March 2022, to assist Counsel with some Record, to assist in the preparation of Closing Submissions.

No Closing Submissions by Counsel for the Defendants

2. To date, I have yet to receive Closing Submissions from Counsel for the Defendants. This sad circumstance persists even after a Court Order, and numerous conversations verbally with Counsel for the Defendants. On the last occasion when we spoke, concern was expressed with the fact that Counsel for the Defendants had not received a copy of the Closing Submissions from Counsel for the Plaintiffs. The Court had at least one Zoom Session in an effort to encourage Counsel to come to an amicable resolution, but to no avail. As a result, and in seeking to not further inconvenience the Plaintiffs, this ruling re Assessment of Damages must be completed, for **“Justice Delayed, is Justice Denied.”**

Evidence of Mr. Kevin Collie

3. In the witness statement of the First Plaintiff Mr. Kevin Collie, dated 17th May 2021, reference is made to a letter from Dr. Eleanor Fung Chung, who initially saw the First Plaintiff on 11th February 2005, the day of the accident. This doctor's diagnosis is that the First Plaintiff sustained a whiplash injury as a result of a motor vehicular accident on the said date. The First Plaintiff then obtained an MRI from Central Magnetic Imaging, and on 5/06/2005 it was seen that the First Plaintiff had disc bulges in several areas of the spine, and was given a diagnosis of Pelvic Subluxation, cervical subluxation, and Cervical Whiplash.

4. In making reference to the report of Dr. Clive Munnings dated 1st August 2005, the MRI from Doctor's Hospital dated 6th November 2017, all bear out the injuries sustained by the First Plaintiff over a period of time. As a result, the First Plaintiff asserts that as a result of the accident of February 2005, he is unable to participate in social activities, his sleeping was affected, as well as sexual functions have been affected. He also notes that he suffers from memory impairment, blurred vision, and headaches associated with occasional dizziness. It is argued by Counsel for the First Plaintiff Mr. Kevin Collie that he suffered from the following injuries, i.e.:-

- a. Whiplash injury;
- b. Spastic Pain in cervical and lumbar spine;
- c. Pain in upper trapezium;
- d. Hyperflexion/hyperextension with associated somatic dysfunction and soft tissue damage;
- e. Numbness in shoulders;
- f. Loss of voice;
- g. Decreased sensation of taste;
- h. Weakness in legs;
- i. Dizziness/vertigo;
- j. Erectile dysfunction;
- k. Whiplash injury with resultant cervical spine injury;

Chronic Pain Syndrome

Depression which contributes to Chronic Pain Syndrome, Psych-emotional issues which contribute to pain.

- l. Bulging discs;
- m. Cerebral concussion;
- n. Post-concussive syndrome;
- o. Cephalgia;
- p. Cervical radiculopathy strain or sprain, secondary to whip-lash type injury with myelopathy, secondary to bulging disc and herniated disc causing spinal stenosis; and
- q. Low back syndrome, secondary to lumbrosacral radiculopathy, secondary to bulging disc with neuroforaminal encroachment.

5. Counsel for the First Plaintiff references the report of Dr. Clive Munnings, Consultant Neurologist, dated 6th March 2018, and the fact that the First Plaintiff continues to suffer from poly-radiculopathy of the cervical and lumbar disc disorders. However this court will reference the issue of disc degeneration, as well as the impact accidents in 2009 and 2011 may have had on the First Plaintiff's condition, when assessed by Dr. Munnings in 2018.

6. The First Plaintiff at the time of the accident was employed at The Bahamas Electricity Corporation as an Electrical Craftsman, fitter mate, who transported switch gears and transformers to work sites and installed torque busbars etc.

Medical Evidence

Dr. Demeritte

7. Dr. Demeritte, a Registered Medical Practitioner within the Commonwealth of The Bahamas, with some twenty three (23) years of experience, at the time, gave evidence in this matter on 1st December 2021. Dr. Demeritte, based on his specialty training in medicine was deemed a specialist in Neurophysiology, a sub area of neurology. He initially assessed Mr. Kevin Collie in 2007 and on review of his notes diagnosed him as suffering from Chronic Pain Syndrome as a result of a motor vehicular accident, which resulted in a ‘Whiplash’ injury. He also noted that Mr. Kevin Collie suffered from depression.

8. At the time, i.e. in 2007 an MRI was done regarding Mr. Kevin Collie and the same showed injury to his neck. He was seen to have multiple herniated discs, which he noted would have contributed to the pain experienced. He also noted bulging discs between L5 and L2, and the fact that the MRI also showed disc desiccation (drying out of the disc). In particular, Dr. Demeritte notes, i.e.:-

‘When you look at the neck, there is no desiccation there. The MRI showed multiple discs bulging, which would be caused by trauma and consistent with acute trauma.’

Dr. Demeritte also noted that Mr. Kevin Collie suffered from psycho-emotional issues, which also contributed to his pain.

9. Dr. Demeritte’s next in depth assessment of Mr. Kevin Collie took place in 2018, where he noted that Mr. Kevin Collie’s depression got better, but noted he never received psychological counselling. He also noted that he did not think all of the injuries at the time, in relation to Mr. Collie, originated from the 2005 accident. Dr. Demeritte noted that Mr. Kevin Collie never admitted to him that he was involved in subsequent accidents. As a result, Dr. Demeritte concluded that the original accident of 2005 only contributed to **20% to 30 %** of Mr. Kevin Collie’s injuries when he assessed him in 2018. Dr. Demeritte noted that the original accident occurred in 2005, and there was a delay of some eight (8) years before any operational procedure.

He noted that “when an individual has an injury to the spine, you can have long term affects and the fact that he delayed having an operation means the pain did not escalate.”

10. According to Dr. Demeritte, the desiccation in the lumbar spine predates the accident which contributed to the 20% to 30% disability. He also noted that regarding the multiple accidents in 2009, 2011, he received surgery between 2013 and 2017. Dr. Demerette gave evidence regarding pre-existing injuries and degeneration in Mr. Kevin Collie’s lower back prior to the 2005 injury. Dr. Demeritte defined degeneration as wear and tear and noted that “as we get older our discs loose water, and we get shorter.”Dr. Demerette gave evidence that at most, only 10% to 30% should be attributed to the 2005 motor vehicular accident, and he based this on looking at Mr. Kevin Collie’s functioning and if anything would stop him in his work as a linesman at The Bahamas Electricity Corporation (BEC), at the time. Dr. Demeritte noted that Mr. Kevin Collie was able to do other work, and was not completely incapacitated.

11. Dr. Demeritte also notes that if there was an Industrial Accident in 2005, the extent of the contribution regarding the same cannot be determined since there is no information regarding the same, for review.

Dr. Clive Munnings

12. Dr. Clive Munnings commenced giving his evidence on 9th July 2021 and continued with cross examination on 15th December 2021. Dr. Clive Munnings noted that he had regard to the history given by the patient, and reports and tests were considered. He noted that he was unable to say with 100% accuracy that all of the injuries complained of by Mr. Kevin Collie were sustained in the 2005 accident. Dr. Munnings noted that he first examined the plaintiff on 26th April 2005.

13. Dr. Munnings also noted that surgery was always considered, but noted he advised the use of medication, supplements, physiotherapy, injections, and surgery as a last resort. Dr. Munnings recommended that Mr. Kevin Collie undergo decompression surgery.

14. Dr. Munnings noted that the predominant factor was the 2005 accident, but noted the other accidents contributed to Mr. Kevin Collie’s condition at the time he examined him. He also noted the desiccation and the fact that Mr. Collie’s discs were subject to degeneration. He noted that there can be signs of water loss in discs three (3) months after an accident, and that it was possible for multiple accidents to cause arthritis to get worse. However, he did note that he did not think psychological treatment was necessary.

15. In referencing the MRI regarding Mr. Collie's Cervical Spine, he noted that there was Spondylosis, and Mild Discogenic disease, which was evidenced by disc bulging. Dr. Munnings referred specifically to Anterior Spondylosis (front of the spine), bulging and herniated discs in 2005. In 2014, when Mr. Kevin Collie was examined, he noted that the seeping herniation went away but the discs still had a problem, i.e. c 2-3, c3-4, and c4-5. However Dr. Munnings disagreed that the discogenic disease he saw at the time was solely as a result of the 2005 accident.

General Damages

Pain, Suffering, and Loss of Amenity

16. Counsel for the First Plaintiff references the case of **Icilda Osborne v. George Barsed, Metropolitan Management, Transport Holdings Ltd, and Owen Clarke**, No. 2005 HC V 294.

In this case reference is made to paragraph 4 of *Sykes J.*'s ruling, i.e.:-

'4. The principles derived from these passages are that assessment of damages in personal injury cases has objective and subjective elements which must be taken into account. The actual injury suffered is the objective part of the assessment. The awareness of the claimant and the knowledge that he or she will live with this injury for quite some time is part of the subjective portion of the assessment. In the case before me, Miss Osbourne will be aware of her back injury. As I will expand on later, the doctor says that activities of daily living will aggravate her injury. In short, the injuries suffered and the awareness of them, in this case, are life-long. For this, she must be compensated. The interaction between the subjective and the objective elements in light of other awards for similar injuries determines the actual award made to a particular claimant before the court. I now turn to an analysis of the evidence.

17. Counsel for the First Plaintiff is arguing that based on the authority above, in the assessment of damages, there are subjective and objective elements that have to be taken into account. The actual injury is the objective aspect and the awareness of the party concerned regarding the same, is the subjective portion of the assessment. In the case at hand the First Plaintiff argues that he has not been pain free since the accident in 2005, and the resultant injuries have interfered with the First Plaintiff's lifestyle, and hence he has had some loss of amenities. However, from this court's perspective, the intervening accidents that occurred since the 2005 motor vehicular accident, are relevant factors that have to be taken into consideration (see para 19, page 5 of the Plaintiff's Counsel's written submissions), i.e.:-

'Dr. Edwin Demeritte puts much reliance on 2 accidents, in which no fault or blame was attributed to the 1st Plaintiff, which he indicates in his medical-legal report was in 2009 and 2011, and that 10 to 30 or as indicated in his evidence in chief 20 to 30 percent, at most should be attributed to the motor accident in 2005.'

18. Counsel for the First Plaintiff references the Dr. Munning's report dated 6th March 2018, where reference was made to an MRI scan dated 6th November 2017. In particular, reference is made to page 12, para 7, which reads as follows, i.e.:-

“these degenerative changes are directly resulting from injuries sustained in the accident on February 11th 2005. Mr. Collie's spine continues to deteriorate and currently the MRI confirms there are right sided compressive effects at C2-C3 and L5-S1, left sided compressive effects at L3-L4.”

19. Counsel for the First Plaintiff argues that in instances where there are two accidents that are consecutive, and may have contributed to the same injury, the original defendant would be liable for the overall injury. In the current circumstance, the court notes that we are concerned not with just two accidents, but three in total, i.e. the original accident of 2005, another in 2009, and a subsequent accident in 2011. The court also notes that there is no issue as to whether the Defendant would be liable regarding first accident, but the extent to which he will be considering the First Plaintiff's current state physically and factoring in the other two intervening accidents. The Court and Counsel for the First Plaintiff reference the Case of **Baker v. Willoughby [1970] AC 467, per Lord Reid**, however, this court's interpretation of the subject case differs from Counsel for the First Plaintiff and reference is made to the judgment of **Lord Reid** where he notes, i.e.:-

‘If the later injury suffered before the date of the trial either reduces the disabilities from the injury for which the Defendant is liable, or shortens the period during which they will be suffered by the Plaintiff, then the Defendant will have to pay less damages. But if the later injuries merely become a concurrent cause of the disabilities caused by the injury inflicted by the Defendant, then in my view they cannot diminish the damages. Suppose that the Plaintiff has to spend a month in bed before the trial because of some illness connected with the original injury, the Defendant cannot say that he does not have to pay anything in respect of that month: during that month the original injuries and the new illness are concurrent causes of his inability to work and that does not reduce the damages.’

20. Hence, it can be argued that the later accidents, reduce the disability for which the Defendant is liable, and is in tune with the professional recommendation made by Dr. Demeritte above of 10% to 30%. Based on the above, the Defendant ought to pay less damages. However, reference can also be made to the case of **Jobling v. Associated Diaries Ltd. [1982] AC 794**, where the plaintiff in this case sustained a back injury in 1973 for which the defendants were answerable. Previously in 1956 he had suffered an injury to his neck, which became disabling in 1976, but this

affect was not related to the 1973 injury. The Court of Appeal applied the ‘but for’ test and refused to extend *Baker* to a supervening non-tortious event, arguing that to do so would create injustice by making the defendant pay for damage in excess for that caused by the tortious act. Thus, this court is of the view that to apply *Baker* to the current circumstance would result in a similar injustice, i.e. the defendant having to pay for damage in excess for what caused the tortious act.

21. Counsel for the First Plaintiff argues that damages ought not to be reduced accordingly as his client’s condition has not improved from the time of the accident in 2005, and his disability continues to this day. In response to the same, the court reiterates the evidence given by Dr. Demeritte above, i.e.:-

‘Dr. Demeritte noted that the original accident occurred in 2005, and there was a delay of some eight (8) years before any operational procedure. He noted that “when an individual has an injury to the spine, you can have long term affects and the fact that he delayed having an operation means the pain did not escalate.”

22. According to Dr. Demeritte, the mere fact that the First Plaintiff delayed having surgery by some eight (8) years, the two things that drive individuals to have surgery were referenced, i.e.:

1. Pain and
2. Physical symptoms

23. He noted specifically that individuals are motivated to have surgery to alleviate pain, hence, Dr. Demeritte’s perspective regarding the issue of pain regarding the First Plaintiff. However, Counsel for Mr. Kevin Colie argues that his client suffers from Chronic Pain Syndrome and invites the court to consider the degree of pain experienced, the overall impact of the symptoms, which includes impairments of cognitive function, headaches, mobility to function in daily life, and the need for care and assistance. The ability of Mr. Kevin Collie to work, the need to take medication to control symptoms of pain, and the effect of such medication on the plaintiff’s ability to function in normal daily life, and its effects on future treatment, the age of the plaintiff and the prognosis. All of this must be considered in light of Dr. Demeritte’s assessment that the plaintiff delayed having surgery for eight years, and noting the fact that pain is one of the main motivators form one to have surgery. As a result, Counsel further argues that because of his client’s pain he is unable to participate in social activities, there is a diminished sexual function, and there is memory impairment. There is an allegation of blurred vision, headaches associated with occasional

dizziness, which have developed since the February 2005 accident.

24. In addition to the above, counsel for Mr. Kevin Collie argues that his client is seeking an increase in the award of damages that has been awarded previously. Reference is made to the case of **Shorn Scott (A.K.A. Shawn Scott) v. Attorney General 2017 UKPC 15, PC Appeal No. 0042 of 2016**. In the said case, counsel for Mr. Kevin Collie argues that in considering the issue of General Damages for pain, suffering and loss of amenities, an adjustment must be made to factor in social and economic conditions and the expectations of the average person and family tending to increase as each year goes by. The court in this circumstance, in assessing the matter at hand intends to and will consider a reasonable sum that reflects the local conditions and expectations of Bahamians.

Judicial College Guidelines (formerly JSB Guidelines) 17th edition

25. Reference will now be made to the aforementioned guidelines regarding the award of General Damages for pain, suffering, and loss of amenity to be determined solely by reference to a relevant fixed tariff scheme. Please note that in this assessment, reference will be made to sub-headings referencing the alleged injuries sustained by Mr. Kevin Collie.

Whiplash Injury

26. In making reference to whiplash injury sustained by Mr. Kevin Collie, it must be noted that as seen above, he was examined in 2007 by Dr. Demeritte regarding the initial accident that took place on 11th February 2005. At the time of the said examination by Dr. Demeritte in 2007, Mr. Kevin Collie was observed to have multiple herniated discs in his neck, and he was suffering from ‘Chronic Pain Syndrome.’ The aforementioned examination took place some two (2) years after the initial accident in 2005, and thus towards this end, and considering the fact that the subject examination took place more than 18 months after the accident concerned, the sum of £4, 345.00 or **\$5,691.95** after considering the exchange rate of 1.31.

Spastic Pain in cervical and Lumbar Spine, Bulging Discs, Cervical Radiculopathy, Strain or Sprain, with Myelopathy, Low Back Syndrome due to Lumbosacral Radiculopathy and Bulging Discs

27. In considering the aforementioned, as well as the evidence of Dr. Demeritte, it must be noted that he examined Mr. Kevin Collie in 2018 as well, i.e. some thirteen (13) years after the initial accident of 2005. It is also noted that after this initial accident, there was a delay of some eight (8) years before any operational procedure. Dr. Demeritte notes in his evidence that a delay in having

surgery normally means ‘pain did not escalate.’ Considering this fact, and in referencing the subject guidelines which note, i.e.:

‘a recovery to nuisance level takes place without surgery within about two to five years. This bracket will also apply to shorter-term acceleration and/or exacerbation injuries, usually between two to five years.’

28. Considering many frequently encountered injuries to the back such as disturbance of ligaments and muscles giving rise to backache, soft tissue injuries resulting in a prolonged acceleration and/or exacerbation of a pre-existing back condition, usually by five years or more, or prolapsed discs necessitating laminectomy, or resulting in repeated lapses. The precise figure will depend upon a number of factors including the severity of the original injury, the degree of pain experienced, the extent of any treatment required in the past or in the future, the impact of the symptoms on the injured person’s ability to function in everyday life and engage in social/recreational activities, and the prognosis for the future. In considering the same, the sum of £20,000.00 is awarded, or some \$26,200.00.

Pain in upper Trapezium; Hyperflexion/Hyperextension with Somatic Dysfunction and Soft Tissue Damage; Numbness in Shoulders

29. The injuries to Mr. Kevin Collie in the aforementioned category can be considered minor in nature, i.e. soft tissue injury to shoulder with considerable pain but almost complete recovery. The starting point for the assessment will be the duration of the symptoms, but the severity of the original injury, the degree of pain experienced, and the extent to which ongoing symptoms are of a minor nature only may justify an award in a higher or lower bracket. An award in a lower bracket is justifiable in the current circumstance considering the fact that Mr. Kevin Collie had no surgery for eight (8) years after the initial accident in 2005. Towards this end, the sum of £7,000.00 is awarded, or \$9,170.00.

Loss of Voice, decreased sensation of Taste

30. No medical evidence was adduced referencing loss of voice or decreased sensation of taste in Mr. Kevin Collie. As a result, nothing will be awarded for pain, suffering, and loss of amenity in this regard.

Weakness in Legs

31. The level of award for this category of injury is influenced by the time spent in plaster, and such a fact is non-existent within this matter. Soft tissue injury such as muscle tears, lacerations,

cuts, bruising or contusions, all of which have recovered completely. Where modest injuries have resolved fully within a few months, an award of less than £2,990 is likely to be justified. This Court will award the sum of £1,000.00 or **\$1,310.00** considering there was no evidence of a leg injury involving the use of plaster, or reference to a fracture of any kind.

Erectile Dysfunction

32. In considering this category of injury, it must be noted that Mr. Kevin Collie referenced Diminished Sexual Function, and not Erectile Dysfunction. In considering the issue at hand Mr. Kevin Collie's age, number of children, the psychological affect from the initial accident in 2005, all must be taken into consideration. However, because the allegation of diminished sexual function implies Mr. Collie is not completely unable to engage in sexual activities, the figure of £12,000.00 is allowed, or some **\$15,720.00**.

Brain and Head Injury

33. The above-mentioned is primarily concerned with injury that produces psychological dysfunction of the brain as a consequence of injury to the head or brain. The classification will normally involve the analysis of any CT/MRI scanning taken in the aftermath of an injury. The terms severe, moderate and mild refer not to the clinical classification of injury, but to the effects of the injury on the claimant. Awards principally reflect the severity of functional outcome. It is important to note that regarding the facts in the matter at hand, besides the whiplash injury, there is no medical evidence of Mr. Kevin Collie sustaining head trauma from the initial accident of 2005. Also, there is no CT/MRI scan evidence to support brain or head injury in this matter. There is no evidence of epilepsy, or head trauma affecting Mr. Kevin Collie's ability to work in the future. Towards this end, nothing will be awarded under this head of damages.

Depression

34. The factors to be taken into account in valuing claims of this nature are as follows:

- (i) the injured person's ability to cope with life, education, and work;
- (ii) the effect on the injured person's relationships with family, friends, and those with whom he or she comes into contact;
- (iii). the extent to which treatment will be successful;
- (iv) future vulnerability;
- (v) prognosis;
- (vi) whether medical help has been sought.

35. As seen above, in 2005 when Mr. Kevin Collie was examined, Dr. Demeritte noted that Mr. Kevin Collie suffered from psycho-emotional issues, which also contributed to his pain. Dr. Demeritte's next in depth assessment of Mr. Kevin Collie took place in 2018, where he noted that Mr. Kevin Collie's depression got better, but noted he never received psychological counselling. Obviously by trial there had been a marked improvement and apparently there was no need for psychological treatment. As a result, this head of damages can be placed in the borderline moderate/less severe category, and hence the award of £3,500.00 or **\$4,585.00**.

Injury Sustained	Figure arrived at based on Judicial College Guidelines	TOTAL
Whiplash Injury	\$5,691.95	
Spastic Pain, Bulging Discs, Cervical Radiculopathy, Myelopathy, Low Back Syndrome due to Lumbosacral Radiculopathy	\$26,200.00	
Pain in Upper Trapezium, Hyperflexion with Somatic Dysfunction, Soft Tissue Damage, numbness in shoulders	\$9,170.00	
Loss of voice, decreased sensation of taste	\$0.00	
Weakness in legs	\$1,310.00	
Erectile Dysfunction	\$15,720.00	
Brain and Head Injury	\$0.00	
Depression	\$4,585.00	
		\$62,676.95

36. The Court at this time takes note of the fact that the initial accident for which this assessment is taking place occurred on 11th February 2005. There were two other subsequent accidents in

2009, and 2011 respectively. The Court also notes the evidence of Dr. Demeritte where he notes in a 2018 examination of Mr. Kevin Collie that he did not think all of the injuries at the time, in relation to Mr. Collie, originated from the 2005 accident. Dr. Demeritte noted that Mr. Kevin Collie never admitted to him that he was involved in subsequent accidents. As a result, Dr. Demeritte concluded that the original accident of 2005 only contributed to **20% to 30 %** of Mr. Kevin Collie's injuries when he assessed him in 2018. As a result, this Court is of the view that out of the aforementioned sum noted above, only 30% of the same is attributable to the 2005 accident. The Court notes that Dr. Demeritte came to such a conclusion based on his professional assessment of Mr. Kevin Collie at the time in 2018. Mr. Kevin Collie's Counsel is seeking to have an increase in the award of damages that have previously been awarded in such matters, however, this court is not minded to in this circumstance considering the aforementioned medical evidence given by Dr. Demeritte, which the Court agrees with. Considering the above, 30% of \$62,676.95 is **\$18,803.00**.

Special Damages

37. Special Damages in this matter were pleaded, but there is a concern regarding specific proving of the same. Of particular concern is during evidence given by Mr. Kevin Collie on 23rd July 2021, and considering the multiple accidents that he suffered since the February 11th 2005 accident, he was unable to identify receipts etc. that specifically referenced the same (please see page 40, lines 11 thru 21, and page 41 lines 18 thru 32 onto page 42 lines 1 thru 10 of Rough Transcript for 21st July 2021). Reference can be made to the West Indian case of Matthews v. O'neal (2018) 92 WIR 374. Here in this case it was noted by the Master that **"Special Damages for pre-trial loss of earnings had to be specifically pleaded and strictly proved."** In particular this case noted the following, i.e.:

'In the absence of both specific pleading and strict proof of the damages awarded, it had not been open to the Master to make an award for Special Damages for pre-trial; loss of earnings.'

38. This is the correct position regarding the law re Special Damages, i.e. they must be specifically pleaded and proved accordingly. As a result, Mr. Kevin Collie is not entitled to Special Damages having regard to the Specially Indorsed Writ filed on 16th February 2007.

Interest

39. It is important to note in this matter that the same commenced via a Specially Endorsed Writ of Summons filed on 16th February 2007. A Judgment in Default of Defence was filed on 16th January 2008, and a subsequent Notice of Assessment of Damages was filed on 4th December 2015. Please also note that to date, the Plaintiffs have been represented by at least three Legal Chambers, the last of which is the mentioned Counsel appearing on behalf of Mr. Kevin Collie.

40. 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.

41. 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 centum per annum.”

42. 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.

43. 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 Judgement in Default filed on 16th January 2008. Hence, $0.0625 \times \$18,803.00 = \$1,175$, and multiplying the same by 16 we get $\$18,800.00$, plus three quarters of $\$1,175$ equals $\$881.25$. As a result we arrive at a figure of $\$18,800.00 + \$881.24 = \$19,681.25$, and adding the same to the aforementioned figure we arrive at figure of $\$18,803.00$ plus interest of $\$19,681.25 = \$38,484.25$.

44. Please also note that interest from the date of the accident, i.e. 11th February 2005 to the date of the Judgement in Default of Defence filed on 16th February 2008, also has to be calculated at the rate of 3%, roughly over a three (3) year period. Hence, $0.03 \times \$18,803.00 = \564.00 , and multiplying the same by three we get \$1,692.00. As a result, our grand total is $\$38,484.25 + \$1,692.00 = \$40,174.25$.

45. As seen above, Counsel for Mr. Kevin Collie references the case of Ruffin Crystal Palace Ltd. v. Laniccini Brathwaite SCCiv & CAIS No. 96 Of 2011, regarding the issue of assessment of damages. This Court immediately notes distinguishing facts such as the issue of an intervening act of medical negligence, and a 'blanket admission of liability,' which does not arise in the matter at hand. Also, in the aforementioned case, the judgment settled any issue regarding contributory negligence, however such a circumstance does not arise in the matter at hand. The subject assessment of damages is the direct result of a Judgement in Default of Defence entered and filed on 16th February 2008. As a result, there was no adjudication on the issue of contributory negligence, however there still exists the undisputed subsequent intervening accidents that Mr. Kevin Collie was subject to in 2009, and 2011, after the initial accident of 2005 that has come out in evidence during this assessment.

46. In referencing the aforementioned case, reference was also made to the case of Lunnun v. Singh and others [1999] EWCA Civ 1736, where Lord Justice Jonathan Parker set out the relevant principle in these words:

“In my judgment, the underlying principle is that on an assessment of damages all issues are open to a defendant save to the extent that they are inconsistent with the earlier determination of the issue of liability, whether such determination takes the form of a full hearing on the facts or a default judgment.”

47. In referencing paragraph 18 of the aforementioned case of Ruffin Crystal Palace Ltd. v. Laniccini Brathwaite SCCiv & CAIS No. 96 Of 2011, i.e.:-

‘On the question of the liability of a defendant to raise the issue of contributory negligence on an assessment of damages, Vice Chancellor Sir Richard Scott said in Maes (above): **“The question whether contributory negligence can be raised for the first time on an assessment of damages, liability already having been established, cannot, in my judgment, now be answered simply by characterizing contributory negligence as a ‘defence.’ Whether it can be raised after judgment depends, in my opinion, on the nature of the issues that were settled by the judgment. It may be that the obtaining of a judgment for damages to be assessed, whether summary judgment or judgment at trial, would have settled some issue on which an allegation of contributory negligence would depend (emphasis mine). If that were so, then contributory**

negligence could not be raised without first setting the judgment aside. But if the judgment had not settled any issue on which an allegation of contributory negligence would depend, I do not see any reason why contributory negligence should not be raised on the assessment of damages.”

48. Considering the relevant fact in the matter at hand that the process of assessment was facilitated by a Judgement in Default of Defence, then it can be argued that the same had not settled any issue on which an allegation of contributory negligence would depend. As a result, the issue of contributory negligence could have been raised during this assessment of damages. In considering the relevant medical evidence as seen above, the view is that Mr. Kevin Collie is only entitled to at most, 30% of the aforementioned assessed amount.

Costs

48. Costs in this matter will be costs fit for one Counsel, to be awarded to the Plaintiffs, to be taxed, if not agreed.

Edmund Turner
Deputy Registrar