**IN THE COMMONWEALTH OF THE BAHAMAS**
**IN THE SUPREME COURT**
**Common Law & Equity Division**
**2018/CLE/gen/00109**

**Between**

**GERRARD WILSON**

**Plaintiff**

**AND**

**DOLLIE THOMPSON**

**Defendant**

**Before:** Registrar Constance A. Delancy

**Appearances:** Mr. Damien Gomez, KC, with Mr. Owen Wells and Ms. Lilnique Murphy-Grant for the Plaintiff

Mr. Adrian Hunt with Mr. Gabriel Brown and Ms. Mirelle Mondelus for the Defendant

**Hearing Dates:** 13 September 2022; 4 April 2023; 5 April 2023, 15 January 2024; and 24 May 2024

## RULING – ASSESSMENT OF DAMAGES

*Law of Tort – Personal Injury – Negligence – Road Traffic Accident – Assessment of Damages – Quantum of Damages – General Damages – Special Damages – Costs – Interests*

[1.] This is a ruling on an assessment of damages for personal injuries sustained from a road traffic accident ("the accident") that occurred on 24 June 2016 between the Plaintiff, a police motorcyclist assigned to the Traffic Division of the Royal Bahamas Police Force (RBPF), and the Defendant, the driver and owner of a motor vehicle. The Defendant admitted liability thereto.

### PROCEDURAL BACKGROUND

[2.] By way of a Specially Indorsed Writ of Summons, Amended Specially Indorsed Writ of Summons, and further Amended Specially Indorsed Writ of Summons filed on 1 February 2018; 6 May 2022, and dated 31 March 2023, respectively, the Plaintiff claims against the Defendant special damages, inter alia, general damages, costs, interests pursuant to the Civil Procedure (Award of Interests Act, 1992) and such further and other relief for personal injuries caused by negligence that was sustained from the road traffic accident that occurred 24 June 2016. The Statement of Claim (as amended) detailed the Plaintiff's particulars of negligence, inter alia, injuries, and special damages. It provided as follows –

## Particulars of Negligence

The Defendant was guilty of negligence in that she –

(1) drove without due care and attention;
(2) drove too fast;
(3) drove across the path of the Plaintiff;
(4) failed to keep any or any proper lookout or to observe or heed the presence of the Plaintiff;
(5) failed to give any or any sufficient warning of her approach;
(6) failed to apply her brakes in time or at all or to steer or control her vehicle to avoid the said collision.

By reason of the matters pleaded above, the Plaintiff has suffered pain, injury, loss, and damage.

## Particulars of Injuries

1. Right talar neck fracture dislocation;
2. Fracture of the right ankle with insensate foot;
3. Avascular necrosis of the talus;
4. Arthritis of the tibiotalar joint;
5. Hammer toe/claw right 2nd toe;
6. Non-union of osteotomy site;
7. Malleolar fracture, right foot, closed with non-union;
8. Right ankle fusion;
9. Right subtalar fusion;
10. Post lateral corner injury inclusive or torn anterior ligament;
11. Right knee reconstruction;
12. Left knee railed anterior cruciate ligament reconstruction with graph re-tear;
13. Posterolateral corner re-construction with severe instability;
14. Left knee revision anterior cruciate ligament with tibia anterior allograph;
15. Left lance open posterolateral corner re-construction revision;
16. Concussion;
17. Lumber radiculopathy;
18. Lumber degenerative disc disease;
19. Lumbar spinal stenosis;
20. Lumbar disk displacement;
21. Posterior spinal fusion L-4, L-5, & L6-S1;
22. Posterior lumbar interbody approach L5-S1;
23. Left shoulder injury, left;
24. Posterior spinal instrumentation L4-S1;
25. Use of allograph;
26. Biochemical device for interbody cage L5-S1;
27. 36mm cannulated cancellous screw left knee;
28. 40mm cannulated cancellous screw left knee;
29. 17mm spiked washer/14mm spiked washer;
30. 6inch scar surgical incision site on the left side of the left knee;
31. 3inch scar rear back surgical incision site;
32. 1.5inch scar surgical incision site on right side of the left knee;
33. 5.5inch scar surgical incision site right side of right foot;

34. 4inch scar on top of right foot surgical incision;
35. 7.7inch scar on right side of right foot surgical incision;
36. Abrasions on left forearm;
37. Lacerations to left hand skin tear in palms.

**Particulars of Special Damages**

1. Medical expenses, Traveling, and Transportation Expenses (and continuing):

| | |
|---|---|
| Traveling and Transportation Expenses – Gerrard Wilson | $12,000.00 |
| Traveling and Transportation Expenses – Monique Greenslade | $ 8,000.00 |
| Traveling and Transportation Expenses – Corderro Greenslade | $ 4,750.00 |
| Traveling and Transportation Expenses – Terrelle Wilson | $ 2,000.00 |
| Total | $26,750.00 |

2. Payment due to Colina Insurance Company pursuant to the terms of a medical insurance with the RBPF whereby the insurers were obligated to pay up to 80% of any medical claim that arose due to injury of an insured members (insurers claim re-payment of this sum via subrogation)

$150,000.00

2(a) Twenty percent (20%) Deductible payment by Gerrard Wilson to Holy Cross arrived at as follows: - $37,500.00

Loan by Monique Greenslade to assist in payment of medical and related expenses not covered by Colina Insurance $22,500.00

Loan by Anthony McKinney, KC $5,000.00

Funds paid by Gerrard Wilson $10,000.00

3. Home Help (and continuing):

Monique Greenslade
$10,000.00

Corderro Greenslade
$3,000.00

Terelle Wilson
$59,000.00

Total
$72,600.00

4. Loss of income @ $1,000.00 per month for 17 months (and continuing):
$1,000.00 x 71 months
$71,000.00

5. Preparation of Medical Reports:

| | |
|---|---|
| Dr. Robert Gibson | $450.00 |
| Dr. Timothy Barrett | $450.00 |
| Dr. Magnus Ekedede | $550.00 |
| Dr. Magnus Ekedede | $550.00 |
| Total | $2,000.00 |

6. Payment due to Monique Greenslade for loss of vacation time when accompanying the Plaintiff for surgeries
$4,854.81

**TOTAL: $364,704.81**

[3.] On 15 February 2019, the Defendant filed its Defence to the personal injury claim.

[4.] On 1 October 2019, the Plaintiff made an application for an interim payment order to assist with his medical expenses incurred as a result of the personal injuries he sustained from the accident. The parties reached a consent agreement on the Plaintiff's application for an interim payment in the sum of $30,000.00 to assist with his medical expenses.

[5.] On 15 July 2020, the Plaintiff made a further application for an interim payment order citing that due to the COVID-19 Pandemic, he was unable to obtain the necessary medical treatment or assessment he required. As a result, he was in dire need of further medical treatment and had fallen in arrears with various bills. The Defendant opposed the application for a further interim payment order contending that the Plaintiff did not meet the test to warrant a further interim payment order. This application was not heard.

[6.] On 21 May 2021, pursuant to an agreed position reached by the parties, a judgment on liability was entered against the Defendant with damages to be assessed.

[7.] On 5 March 2021, directions for the assessment of damages were given at a case management conference. The Court ordered, inter alia, that the Plaintiff file an Agreed or Non-agreed Bundle of Documents by 29 March 2021.

[8.] The parties were unable to reach an agreement on the medical reports to be used for the assessment of damages. The matter then referred to the Registrar of the Supreme Court for an assessment of damages.

[9.] 12 November 2021, the parties appeared before the Registrar for a directions hearing about the assessment of damages. On 31 January 2022, the parties returned to the Registrar for a pre-trial review hearing about the assessment of damages.

[10.] On 13 September 2022, 4 April 2023, and 5 April 2023, the parties appeared before the Registrar of the Supreme Court for the assessment of damages hearing.

[11.] The Defendant's closing submissions were dated 15 January 2024. The Plaintiff's closing submissions were received by the Court on 24 May 2024. The Court reserved its decision and promised to produce a written ruling at a later date.

**ISSUE**

[12.] The issue to be determined by the Court is the quantum of damages entitled to the Plaintiff for the personal injuries sustained from the accident that occurred as a result of the Defendant's negligence.

**EVIDENCE**

[13.] The Plaintiff gave evidence on his own behalf and called 5 additional witnesses, which included: Monique Greenslade; Corderro Greenslade; Corporal 2896 Devaughn Fraser; Anthony McKinney, KC; and Dr. Magnus Ekedede. Dr. Magnus Ekedede was deemed an expert in neurological surgery for the purposes of these proceedings.

[14.] The Defendant called 1 witness: licenced orthopaedic surgeon, Dr. David N. Barnett. Dr. David N. Barnett was deemed an expert in orthopaedics and biomechanics for the purposes of these proceedings.

**The Plaintiff's Evidence**

[15.] Mr. Anthony McKinney's, KC evidence-in-chief was contained in his witness statement filed on 6 May 2022. Mr. McKinney, KC recounted that during the Plaintiff's medical care, he was required to undergo surgery on his right foot at Holy Cross Hospital, Florida, USA, and he could not have the surgery performed unless he paid the funds requested. The Plaintiff did not have the funds. That having been friends with the Plaintiff's family for about 20 years and based on friendship, he loaned the Plaintiff $5,000.00 to help pay for the surgery on his right foot.

[16.] Under cross-examination, Mr. McKinney, KC, stated that he was not provided with any receipts or invoices for the sum he loaned the Plaintiff. He was aware that the Plaintiff had to have surgery because he had been directed to go for surgery. The Plaintiff was attempting to raise the funds but he was unsuccessful. Thus, he decided to lend him funds as a last resort.

[17.] Dr. Magnus Ekedede's evidence-in-chief was contained in his witness statement filed on 6 May 2022. Dr. Ekedede is a licenced neurosurgeon in The Bahamas. He serves as the Chief Consultant of Neurological Surgery at the Princess Margaret Hospital and Doctors Hospital and a visiting consultant at the Cheshire Hall Hospital, Providenciales, Turks and Caicos. Dr. Ekedede is also the Director of the Neurological Institute of The Bahamas.

[18.] Dr. Ekedede recounted that he first came into contact with the Plaintiff on 27 February 2014 when he came to him for medical care and treatment. The Plaintiff subsequently came to him on 24 June 2016 after being involved in a motor vehicle accident. Dr. Ekedede prepared two medical reports relative to the Plaintiff dated 15 February 2021 and 31 March 2022, respectively.

[19.] Dr. Ekedede, in his 15 February 2021 report, detailed that the Plaintiff sustained severe and intractable lower back pain and sciatica from a motor vehicle accident that occurred in December 2013. The Plaintiff experienced, *inter alia*, problems with urination, severe back pain when he walked and he was unable to move from place to place. The Plaintiff was unable to feel his groin and nothing could stop his lower back pain and sciatica pain. On examination, it became clear that the Plaintiff had cuada equina syndrome. On 28 February 2014, the Plaintiff underwent an L5-S1 Decompression (Laminectomy-Discectomy) to free the nerve and cuada equina from impingement (or compression). The Plaintiff was free from pain the moment he woke from surgery and also underwent multiple sessions of postoperative physiotherapy sessions. By the end of 2014, the Plaintiff was completely healed and ready to return to work. However, the Plaintiff was advised to avoid excessive lifting, bending, and overreaching in the future.

[20.] Dr. Ekedede further detailed that the Plaintiff was involved in another motor vehicle accident in 2016, which resulted in injury to his knee, ankle, and lower back and required him to undergo multiple surgical operations both locally and in the United States. The Plaintiff has not been able to return to work since the 2016 accident. The Plaintiff's 2013 accident had absolutely nothing to do with his injuries sustained in the 2016 accident.

[21.] Dr. Ekedede, in his 31 March 2022 report, reiterated that the Plaintiff had recovered completely from all of his symptoms and he was able to return to work after the 2014 surgery. Dr. Ekedede disagreed with the medical opinion of Dr. David N. Barnett that the Plaintiff's lower back pain in 2018 did not stem from the 2016 accident but from the 2013 accident. However, Dr. Ekedede did advise that if the Plaintiff was involved in a future accident or suffered a fall, it would be likely that the part of his disc that is still intact could protrude again.

[22.] Under cross-examination, Dr. Ekedede revealed that when the Plaintiff presented to him in 2014, he had mild stenosis, disc desiccation, and disc herniation radiculopathy; degenerative conditions that could be accelerated with age and exposure to trauma, which were separate and apart from the injury sustained by the Plaintiff from the 2013 accident.

[23.] Further in cross-examination, Dr. Ekedede sought to clarify his findings that the Plaintiff had completely recovered. Dr. Ekedede's clarification came after it was revealed that the Plaintiff visited his office in January 2016, some 2 years later, after no intervening accidents and 6 months prior to the 2016 accident, complaining of "occasional back pain" and was prescribed anti-inflammatory and 12 sessions of physiotherapy. Dr. Ekedede revealed that his findings that the Plaintiff had completely recovered from his injury sustained from the 2013 accident did not mean

that the Plaintiff had completely healed from the injury itself but had fully recovered from how the Plaintiff presented to him before the 2014 surgery was performed. The Plaintiff gained the ability to do the things he had once complained of not being able to do prior to the 2014 surgery. However, Dr. Ekedede conceded that it was still very possible that Plaintiff could have had an underlying degenerative condition given the occupational hazards and nature of his job and the history of injuries sustained by the Plaintiff from accidents while in the course of performing his duties as a motorcyclist.

[24.] The Plaintiff's evidence-in-chief was contained in his witness statement and supplemental witness statement filed on 6 May 2022 and 4 April 2023, respectively. The Plaintiff is and was at all material times a police motorcyclist with the rank of a corporal attached to the Traffic Division of the RBPF.

[25.] The Plaintiff recounted that on 24 June 2016, he was placed on a funeral detail for a fallen police officer. That he led the funeral procession and immediately behind him was his partner Corporal 2896 Devaughn Fraser. Around 1:00 pm while driving in the westbound lane on Prince Charles Drive, New Providence, The Bahamas, a car driven by the Defendant came into the westbound lane and struck him from his police-issued motorcycle rendering him unconscious. He was transported to Doctor's Hospital. When he regained consciousness, he was made aware that he received serious injuries. He then received treatment for his ankle, knee, and foot. At the time, he thought these were his only injuries. However, he then noticed that he had suffered injuries to his back and shoulder.

[26.] The Plaintiff further recounted that since the accident, he had to undergo 8 surgical procedures, which have all been presented with their different challenges and been accompanied by different levels of physical, mental, and emotional pain. The 8 separate surgical procedures required separate healing and rehabilitation processes which physically, mentally, and emotionally drained him. During the healing processes, he experienced episodes of pain so excruciating that he contemplated suicidal thoughts just to get rid of the pain. He was ultimately referred to a pain management specialist who had special authorization to provide him with a higher dosage of pain medication intra-muscularly and intra-vascularly. This brought him to a manageable level of comfort. Apart from the physical pain and agony he experienced as a result of his injuries, he also experienced bouts of depression. They have now gone away and he feels mentally stable and normal. Among the things that caused him depression was his sex life which has been seriously impacted. Before the accident, he and his then fiancé (now his wife) had a normal and healthy sexual relationship. At the time of the accident, he was a young man about to be married and after the accident, he feared that he would not perform sexually- as before especially since his wife is also a young woman.

[27.] According to the Plaintiff he was a healthy individual prior to the accident. He enjoyed activities such as weight lifting, basketball, and other activities of a physical nature with his children and wife. Since the accident, he has not been able to walk properly. Currently, to walk,

he has to lift and swing his foot and rest it down gently. He is still cannot fully engage in activities with his children. His doctors have told him that he can no longer do anything that involves weight-bearing while standing. His doctors have told him that if he should return to work as a police officer, he could only work in a sedentary role as standing is totally out of the question.

[28.] The Plaintiff also detailed that since the accident in 2016, he was unable to care for himself as his foot was in a cast and he could not move. As a result of his immobility, he had to be helped in every function including being taken to the bathroom and other personal care. That he was assisted at all material times while he was immobile by his mother, Monique Greenslade; his brother, Corderro Greenslade; and his wife, Terelle Wilson. He requests that they be compensated for all the help they gave in taking care of him.

[29.] The Plaintiff recounted that prior to the accident in 2016, he had 2 mishaps while as a police motorcyclist. On both occasions, he saw Dr. Magnus Ekedede who treated him. The first mishap occurred in 2012 in which he sustained minor injuries and did not need surgical intervention. The second mishap occurred in 2013 in which he sustained an injury to his back.

[30.] The Plaintiff testified that the accident had caused him financial strain, notwithstanding that he received his salary. His salary was not sufficient to cover all his expenses and as a result of bills, debt eventually started to accrue. As a result of the debts, he had to take out a personal loan. Coupled with his increasing debts and medical expenses, he also had to take out loans from his mother, Monique Greenslade, and family friend, Anthony McKinney, KC. The accident and his incapacitation therefrom also caused him to miss 3 promotion exercises. This is notwithstanding the he was promoted to the rank of corporal in 2012 and sat and passed the examinations which made him eligible for promotion to the rank of sergeant in 2015. Many of the officers with whom he had joined the police force had already received promotions taking them from the rank of corporal and superintendents.

[31.] Under cross-examination, the Plaintiff acknowledged that he had experienced more than 2 industrial-related accidents while as a police motorcyclist. The Plaintiff also acknowledged that he was still receiving his salary. The Plaintiff conceded that he was unable to provide any evidence that he was not promoted in any of the 3 promotional exercises due to his injuries from the accident. This was irrespective of the fact that he iterated that he was told by his superiors that he was not promoted because of the accident. The Plaintiff further conceded that he had experienced some progress from his injuries since the accident. However, he was not at the baseline he wanted to be, or the state he was in before the accident. He iterated that he was still not in the position to stand for long periods. The latter concessions came about after it was revealed that the Plaintiff had assisted his Counsel with the transportation of several documents into the Court for the assessment of damages proceedings. The Plaintiff was also observed walking into the Court without the use of a walking aid or device.

[32.] Ms. Monique Greenslade's evidence-in-chief was contained in her witness statement and an amended witness statement filed on 6 May 2022 and 28 March 2023, respectively. Ms. Greenslade the Plaintiff's mother. Ms. Greenslade was at the material time a sergeant at The Bahamas Department of Correctional Services. She is now a principal officer on secondment to the Ministry of Social Services.

[33.] Ms. Greenslade recounted that prior to the accident in 2016, the Plaintiff was a healthy, active, and athletic young man who was engaged to be married on 23 July 2023 to his then fiancé, now wife.

[34.] Shortly after the accident, she was summoned to Doctor's Hospital and upon arrival was informed that the Plaintiff had suffered serious but not life-threatening injuries. She was told that the Plaintiff sustained serious injuries to his foot and ankle. The Plaintiff remained in the hospital for 3 weeks and his foot was placed in a cast which he had on for 3 months.

[35.] Ms. Greenslade also recounted that as a result of the accident, the Plaintiff was unable to look after himself which necessitated him being cared for full-time by his wife, her other son, Corderro Greenslade, and herself. They were responsible for transporting him to and from the doctors and generally had to attend to all his needs.

[36.] Ms. Greenslade detailed that the days leading up to the Plaintiff's wedding were particularly difficult for him as he could not walk normally in a wedding ceremony and had to rely on being helped at all stages of the ceremony.

[37.] Ms. Greenslade further recounted that as the Plaintiff's mother, she had to constantly care for and support him emotionally, physically, and mentally. In addition, she had to help him meet his financial obligations and lent him over $20,000.00 over the period since the accident. The Plaintiff's financial situation changed drastically after the accident as his funds and savings were depleted.

[38.] Ms. Greenslade also recounted that the Plaintiff had to travel to the United States of America on at least 3 occasions, which included: the first trip for surgery on his back, the second trip for surgery on his right foot; and the third trip for the removal of the hardware that was placed in his right foot. To make each trip, she had to incur expenses for airline tickets, accommodations, food, and miscellaneous items. In addition, she had to give up 41 days of vacation time. The documents in support of her expenditure, namely, airline tickets, ground transportation, food, and other miscellaneous expenses were given to the Plaintiff's attorneys and they have only located some of them. She was shown the ones exhibited and verified that they were true copies of the documents representing her expenditure.

[39.] Under cross-examination, Ms. Greenslade admitted that throughout the time she had provided family care and assistance to the Plaintiff, her salary was never docked or deducted. She

received her full vacation pay for the 41 days' vacation leave she had requested. She further conceded that she had the option to take unpaid leave but the paid vacation leave was the better option.

[40.] Mr. Corderro Greenslade's evidence-in-chief was contained in his witness statement filed on 6 May 2022. Mr. Greenslade is the Plaintiff's brother. Mr. Greenslade was at the material time a constable of the Royal Bahamas Police Force. At the time of giving his evidence, Mr. Greenslade had attained the rank of corporal.

[41.] Mr. Greenslade recounted that since the Plaintiff's accident in 2016, he along with Ms. Monique Greenslade, their mother, and the Plaintiff's wife, had to provide the Plaintiff with family care and assistance as he was almost totally unable to move about. Mr. Greenslade described this task as difficult as the Plaintiff was much bigger than him.

[42.] Mr. Greenslade further recounted that on at least 2 occasions he had to travel with the Plaintiff to the United States to provide family care and assistance. These occasions included when the Plaintiff was sent to Miami, Florida, for back surgery and when he had to go to Fort Lauderdale, Florida, for surgery on his foot. To make both trips, he had to pay for all his expenses, including airfare, ground transportation, and food. Moreover, he had to request 4 weeks' vacation leave to accommodate the Plaintiff on these occasions.

[43.] Mr. Greenslade detailed that the Plaintiff always understood and agreed that he would reimburse him for the funds expended by him. The documents in support of his expenses, including airline tickets, accommodation, food, and ground transportation were provided to the Plaintiff's attorneys; however, they have not been able to locate them and he has claimed payment for them from the Plaintiff in his bill to him.

[44.] Under cross-examination, Mr. Greenslade admitted that throughout the time he provided family care and assistance to the Plaintiff he received his full salary. Further, that for the 4 weeks' vacation leave he had requested, he received his vacation pay.

[45.] Corporal 2896 Devaughn Fraser's evidence-in-chief was contained in his witness statement and amended witness statement filed on 6 May 2022 and 4 April 2023, respectively. Mr. Fraser is and was at the material time a police motorcyclist with the rank of corporal. Mr. Fraser recounted that on 24 June 2024, he was placed on a funeral detail for a fallen officer. The funeral procession was led by the Plaintiff with Mr. Fraser immediately behind. At around 1:00 pm while heading west on Prince Charles Drive in the westbound lane, a motor vehicle driven by the Defendant and traveling east on Prince Charles Drive came into the westbound lane, collided with the motorcycle operated by the Plaintiff and struck from the same. The Plaintiff was thrown through the air onto the windshield of the Defendant's car and sustained visible injuries. The Plaintiff was transported to Doctors Hospital via ambulance.

[46.] The Defendant's Counsel elected not to cross-examine Mr. Fraser. Mr. Fraser not being cross-examined, his evidence remains unchallenged.

**The Defendant's Evidence**

[47.] Dr. David N. Barnett's evidence-in-chief was contained in his witness statement and supplemental witness statement filed on 17 January 2022 and 4 April 2023, respectively. Dr. Barnett is a qualified medical doctor specializing in orthopaedics and biomechanics. He is licenced to practice medicine in The Bahamas. Dr. Barnett is also a fellow of the British Orthopaedic Association, a member of the American Academy of Orthopaedic Surgeons, a consultant Orthopaedic Surgeon, and an associate lecturer at the University of the West Indies.

[48.] Dr. Barnett recounted that he was requested to assess the Plaintiff which included taking a history, performing an examination, and reviewing the Plaintiff's medical records, and to provide medical expert evidence. He assessed the Plaintiff and provided a medical report dated 5 November 2019. He assessed the Plaintiff again and provided an updated medical report dated 10 September 2020. Dr. Barnett's medical reports were based on: (i) consultation with the Plaintiff on 11 April 2019, which consisted of taking a history, performing an examination, and a review of radiographic investigations; as well as several telephone conferences to obtain updates; (ii) a review of a file prepared by himself, mainly of documents in reference to consultations performed on behalf of the National Insurance Board, consultations that arose as a consequence of several job-related accidents that the Plaintiff was involved in, a file held by consultant orthopaedic surgeon Dr. Dane Bowe, the Plaintiff's Doctor's Hospital file, and documents prepared by podiatrist Dr. Jennifer Boeri, Holy Cross Hospital, Fort Lauderdale, Florida; and (iii) follow-up consultation with the Plaintiff on 30 July 2020, which consisted of taking a history, performing an examination and a review of the Plaintiff's most recent follow-up consultation notes from his surgical team at Holy Cross Medical Group, Oakland Park, Florida.

[49.] Dr. Barnett's evidence detailed that the Plaintiff was involved in a road traffic accident on 24 June 2016 when he was said to have sustained injuries, which have or will result in permanent deficits, some of which were still being treated. However, the defects were superimposed on several other previously documented permanent deficits, which too are present as a consequence of other accidents that had occurred before 24 June 2016. Therefore, he applied the doctrine of causation in the medical reports to apportion blame for the separate deficits.

[50.] Dr. Barnett's evidence further detailed a chronological history of the Plaintiff's job-related accidents while he served as a police motorcyclist, injuries sustained and medical interventions and/treatment provided thereto. Throughout the Plaintiff's attachment with the Traffic Division of the RBPF, he encountered at least 6 job-related accidents. The Plaintiff's first job-related accident occurred on 6 March 2008 while his most recent job-related accident occurred on 24 June 2016, the accident which is the subject of the present proceedings.

[51.] Dr. Barnett's evidence further detailed the Plaintiff's injuries that occurred because and/or developed as a consequence of the 2016 accident, which included multiple ligament injuries to the left knee, a fracture of the neck of the right talus, injury to the posterior tibial nerve, and multiple superficial abrasions. Dr. Barnett opined that the injuries sustained to the Plaintiff's spine had little to no nexus to the 2016 accident; but were superimposed by the Plaintiff's prior job-related accidents. Notwithstanding, Dr. Barnett summarized that the Plaintiff's impairment to his lower extremities as a consequence of the 2016 accident is subsumed in the 50% whole person impairment, which represented all of the injuries, including his neck, shoulders, and spinal issues and disorders had little to no nexus to the 2016 accident.

[52.] Dr. Barnett's evidence ultimately detailed that while the Plaintiff's prognosis had shown some improvement, the Plaintiff had not reached the maximum medical improvement. It was impossible to comment] on the validity of the Plaintiff's long-term status. Dr. Barnett opined that while the Plaintiff will have permanent impairments, he was not disabled and should be able to return to work in a sedentary role in the RBPF. Dr. Barnett recommended that the Plaintiff be reviewed in 4 to 6 months from the date of his 30 July 2020 consultation. At that time, he hoped that an exit report may be proffered relative to the Plaintiff.

[53.] Under cross-examination, Dr. Barnett acknowledged that the Plaintiff was never assessed within the 4 to 6 months' time period as recommended. In re-examination, Dr. Barnett clarified that the assessment never occurred because the Plaintiff never presented himself for the assessment and that the Plaintiff was not obligated to present himself for the assessment. The Plaintiff was sent to him by the insurance company. It was the duty of the insurance company to ensure that the Plaintiff presented himself for the assessment.

**LAW AND ANALYSIS**

[54.] It is well-established that when assessing compensation for a victim of a tort the Court ought to be guided by the principle that the victim ought to be place in the same position, as far as reasonably practicable or so far as can be done by an award of money, that he would have been in had the tort not occurred. The contingencies inherent to the tort victim at the time of the tort and contingencies affecting the tort victim must be considered. The leading consideration for awards for damages is grounded on fairness and reasonableness as per *Lord Blackburn* in **Livingston v The Raywards Coal Company** (1880) 5 App. Cas 25.

[55.] In **Darren Rutherford v The Commissioner of Police and The Attorney General 2012/CLE/gen/00414** as per *Charles, J.* at para. 25:

> ….The award of damages is not meant to be a windfall but fair and reasonable compensation for the injuries suffered.

[56.] The Court is further reminded of and guided by the principle regarding what may be open to a defendant to raise at an assessment of damages. In the case of **Raynor Russell and Donita Russell v Ryan Strachan SCCivApp No. 179 of 2023** as per *Evans, JA* at para. 26 thereof:

> There is a fine but important distinction between contributory negligence and causation. Contributory negligence is inherently an issue as to liability. Causation on the other hand is an issue relative to damages incurred. It is concerned with the cause of the injuries (damages) for which the claim is being made. **It follows that a defendant could be liable for the accident but a Plaintiff still has to prove that the damages claim resulted from the accident.**
>
> [Emphasis added]

[57.] Therefore, the issue of causation remains open to a defendant to raise at an assessment of damages even instances where the defendant would have already admitted liability unconditionally. The burden of proof continues to rest on the tort victim to prove that the damages claimed resulted from the tort. The standard of proof is on the civil standard which is on the balance of probabilities. The burden of proof and standard of proof is only discharged with the production of independent and credible evidence.

[58.] The assessment of damages for injuries sustained as a result of an accident falls under 2 broad heads, namely, general damages and special damages. In case of **British Transport Commission v Gouley** [1956] AC 185 at page 206 Lord Goddard explained the heads of damages:

> In an action for personal injuries, the damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial and is generally capable of substantially exact estimation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future.

**Special Damages**

[59.] Special damages must be particularized and proven as per the dicta of *Lord Goddard* in **Bonham-Carter v Hyde Park Hotel Ltd** (1948) 64 TLR 177 at page 178:

> … Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying, "This is what I have lost; I ask you to give me these damages." They have to prove it.

**Medical Insurance Deductible, Subrogation, and Loans**

[60.] The Plaintiff claimed special damages of $139,854.56, representing the funds paid by himself and Colina Insurance Limited regarding medical expenses incurred from the 2016 accident. The Plaintiff claimed the following –

(1) $26,000.00 – representing the 20% medical insurance deductible paid by himself in relation to the injuries sustained from the 2016 accident; and

(2) $113,854.56 – representing the 80% payment made by Colina Insurance Limited (the insurer) in relation to the injuries sustained by him from the 2016 accident.

[61.] The Plaintiff claimed that the 20% medical insurance deductible and other medical-related expenses inclusive of travel expenses, ground transportation, food and accommodation were made by loans representing $37,500.00 that he had to obtain from the following institutions and individuals:

(1) $10,000.00 representing the loans he obtained from The Bahamas Law Enforcement Co-operative Credit Union and Commonwealth Bank;
(2) $22,500.00 representing the loan he obtained from Monique Greenslade who obtained the funds from her loan with The Bahamas Law Enforcement Co-operative Credit Union; and
(3) $5,000.00 representing the loan he obtained from Anthony McKinney, KC.

[62.] The terms of the medical insurance provided that the insurer would be obligated to pay up to 80% of any medical claim that arose due to an injury sustained by the Plaintiff. The Plaintiff would be obligated to pay up to 20% of any medical claim. The Plaintiff contended that the insurer demanded re-payment via subrogation.

[63.] The Plaintiff originally claimed special damages of $187,500.00 representing $37,500.00 for 20% medical insurance deductible and $150,000.00 for the 80% insurer's payment. However, in closing submissions, the Plaintiff stated that he paid approximately $26,000.00 for the 20% medical insurance deductible and the 80% insurer's payment was $113,854.56 instead of $150,000.00. The Plaintiff stated that the difference in the figures was because a demand letter which was issued by Colina Insurance Limited was not available for review at trial. Subsequently, the demand letter was found and a copy was sent to the Defendant's Counsel and the Court. There was exhibited to the Plaintiff's closing submissions a letter dated 4 May 2022 from Colina Insurance Limited, which indicated that the insurer had settled claims totalling $113,854.56 relating to the Plaintiff's injury sustained from the 2016 accident. The Court is not certain that the letter by Colina Insurance Limited ought to be classified as a demand letter. There was no demand, whether explicitly or subtlety, made in the letter.

[64.] The Courts notes that the Plaintiff never sought leave to amend his further amended specially endorsed Writ of Summons to reflect the change in his special damages claim relative to the 20% medical insurance deductible and 80% insurer's payment.

[65.] Counsel for the Defendant submitted that neither the 20% medical insurance deductible nor the 80% insurer's payment ought to be awarded. That Plaintiff did not produce any receipt evidencing payment of the 20% medical insurance deductible. Notwithstanding that the Plaintiff underwent various surgical procedures he was still obligated to provide proof of payment.

[66.] Counsel further submitted that the Plaintiff could not advance a claim for sums that were paid for by his insurer. Counsel drew the Court's attention to the case of **Delone Symonette v Charles Turnquest 2008/CLE/gen/01877** wherein *Winder J* highlighted the distinction between

medical insurance and accident insurance policies. The Court held that funds paid by an insurer under a medical insurance policy as opposed to under an accident insurance policy are not funds paid out-of-pocket by the tort victim but by the insurer. Thus, the tort victim does not possess the locus standi to make claim for such funds. The locus standi rests with the insurer to make a claim for funds paid by them under a medical insurance policy if they so wished; it is incapable of being transferred to the tort victim or policyholder.

[67.] The contractual effect of subrogation was considered by *Gray-Evans, J.* in the case of **Cyril Livingstone Minnis v Commonwealth Bank Limited et al BS 2017 SC 69** at paras. 123 and 124 thereof:

> 123. Lord Hoffman in the case of Banque Financiere de la Cite v Parc (Battersea) supra opined that "subrogation" may be a "contractual arrangement for the transfer of rights against third parties" but that "the term is also used to describe an equitable remedy to reverse or prevent unjust enrichment". He described the former as being part of the law of contract and the latter as part of the law of restitution.
>
> 124. In the case of the law of contract, Lord Hoffman said that the doctrine of subrogation rests upon the common intention of the parties, as in the case of insurance claims, and gives effect to the principle of indemnity embodied in the contract. **A typical case of such subrogation, he noted, is when an insurance company pays its insured client for injuries and losses caused by another, then sues that other party which the injured person contends caused the damages to him to recover the sum paid**.
>
> [Emphasis added]

[68.] Therefore, the Court makes no award of special damages in respect to the Plaintiff's claim for the loans which he purportedly procured to pay the 20% medical insurance deductible and other medical-related expenses, and his claim for the 80% insurer payment via subrogation.

[69.] While the Plaintiff and his witnesses sought to exhibit documents to their respective witness statements evidencing the loans, those documents were without clarity and assistance to the Court. The Plaintiff and his witnesses exhibited no receipts or proof of payment displaying the quantifiable amounts of the 20% medical insurance deductible or other medical-related expenses. Furthermore, no evidence was led to prove the application of the funds from the loans to the Plaintiff's 20% medical insurance deductible and other medical-related expenses. When cross-examined on the lack of evidence to show the application of the loans' funds to his 20% medical insurance deductible and other medical-related expenses, the Plaintiff proved to be evasive and dismissive stating that he only provided what was instructed by his attorneys. This is notwithstanding that the loans' funds were purportedly deposited on the Plaintiff's accounts with various commercial banks in The Bahamas and dispersed therefrom for payment of the 20% medical insurance deductible and other medical-related expenses via online payments and/or wire transfers. The Plaintiff, while under cross-examination, sought further to draw the Court into the realm of speculation, contending that 80% insurer's payment could only indicate one thing, that is, he paid the 20% medical insurance deductible. It was incumbent on the Plaintiff not only specially plead and particularize his special damages but also to prove such damages by

independent and credible evidence. The Plaintiff's failure to do so must indicate only one thing, that is, he must suffer the consequences for his failure.

[70.] With respect to the Plaintiff's claim for the 80% insurer's payment that he purportedly claimed for and on behalf of insurer via subrogation, the Court is constrained by the ruling of *Winder, J.* in **Symonette (supra)** which are instructive and applicable to the present case. The locus standi to make a claim for the 80% insurer payment rests with the insurer, not with the Plaintiff, if they so wished to do so.

**Medical Reports**

[71.] The Plaintiff claimed special damages for $2,000.00 representing the costs for reports produced by the following –

(1) Dr. Robert Gibson - $450.00
(2) Dr. Timothy Barrett - $450.00; and
(3) Dr. Magnus Ekedede - $1,100.00

[72.] The Court is not minded to make an award of special damages for $2,000.00 representing the purported costs of the medical reports. While the Plaintiff specially pleaded and particularized the claim for special damages regarding the medical reports, he failed to prove such costs were incurred or paid. The Plaintiff provided no receipts or other evidence, proving the costs or payment for such medical reports.

**Family Care and Home Care**

[73.] The Plaintiff claimed special damages for $69,500.00 representing the costs for family care and home care services provided by the following members of his family –

| Family Member | Home Care Period(s) | Price | Total |
|---|---|---|---|
| Monique Greenslade | 9 July 2016 – 14 August 2016; 30 September 2016 – 29 October 2016; 8 July 2017 – 5 August 2017; and 8 September 2019 – 16 September 2019 | $100.00 per day x 105 days | $10,500.00 |
| Corderro Greenslade | 17 September 2017 – 1 October 2019 | $100.00 per day x 15 days | $1,500.00 |
| Terelle Wilson | June 2016 – May 2021 (Home Care); and | Home Care - $150.00 per week x 253 weeks | $37,950.00 |

| | | | |
|---|---|---|---|
| | August 2017 – May 2021 (Child Care) | Child Care – $100.00 per week x 196 weeks | $19,600.00 |
| **Overall Total** | | | **$69,500.00** |

[74.] The Plaintiff contended that his mother, Monique Greenslade; brother, Corderro Greenslade; and wife, Terrelle Wilson, ought to be compensated for their family and home care services provided to him while he recovered from the injuries sustained from the 2016 accident, which temporarily hindered his ability to care for himself. The Plaintiff exhibited to his supplemental witness statement purported bills produced by Monique Greenslade, Corderro Greenslade, and Terrelle Wilson for their family care and home care services. However, Monique Greenslade and Corderro Greenslade, under cross-examination, acknowledged that they suffered no loss with respect to their salaries. Their salaries were never deducted or foregone as a result of the family care and home care services they provided to the Plaintiff. Monique Greenslade, in cross-examination, admitted that she rotated her time around her work hours to provide family and home care services to the Plaintiff. Further, Terrelle Wilson was never called as a witness in these proceedings nor was her witness statement entered into evidence by consent of the parties.

[75.] The Plaintiff, in support of his claim for family care and home care, relied on the case of **Cunningham v Harrison [1973] 1 QB 942**. In that case, the plaintiff was a 47 year-old man who had been severely injured in a road traffic accident. He was permanently paralyzed in his body and his four limbs. The plaintiff was rendered bedridden and wheelchair-bound. He was entirely dependent on others for dressing, internal and external cleaning, and partly for feeding. The plaintiff's wife provided devoted nursing care for him until her death. However, but for her death, the plaintiff was not allowed to claim special damages on her behalf for the nursing care rendered. *Lord Denning MR* posited at 952A-C:

> … It seems to me that when a husband is grievously injured and is entitled to damages then it is only right and just that, if his wife renders services to him, instead of a nurse, he should recover compensation for the value of the services that his wife has rendered. It should not be necessary to draw up a legal agreement for them. On recovering such an amount, the husband should hold it on trust for her and pay it over to her. She cannot herself sue the wrongdoer; but she has rendered services necessitated by the wrongdoing and should be compensated for it. If she had given up paid work to look after him, he would clearly have been entitled to recover on her behalf; because the family income would have dropped by so much. Even though she had not been doing paid work but only domestic duties in the house, nevertheless all extra attendance on him certainly calls for compensation.

[76.] The Defendant acknowledged that the cost of family care and home care services provided by a family member may be recoverable. The Defendant further acknowledged that the basis for the calculation of such is also well-established and settled in law. The Defendant relied on the decision **Giambrone and others v Sunworld Holidays Ltd.** [2004] EWCA Civ 158 wherein it was adjudged that if a family caregiver is employed, then the calculation is based on the loss of

income whereas for an unemployed caregiver, the calculation is based on a discount of the commercially acceptable rates for services provide.

[77.] The Defendant contended that no award ought to be made concerning Terrelle Wilson as she was not called as a witness in these proceedings, inter alia, the Court is unaware of whether she was employed at the time of any care rendered to the Plaintiff, and there was no corroboration of the care purportedly rendered by her to the Plaintiff.

[78.] The Defendant further contended that no awards ought to be made concerning Monqiue Greenslade and Corderro Greenslade as they were employed at the relevant time and neither led evidence that they have lost any pay because of any services rendered to the Plaintiff. The Plaintiff led no evidence as to the commercial rate of care against which any of the sums claimed in respect to Monique Greenslade and Corderro Greenslade could be considered. Moreover, the evidence did not suggest whether the care provided by Monique Greenslade and Corderro Greenslade was significant or regular. In particular, neither individual was able to offer any specifics as to what the care they claimed to have provided to the Plaintiff entailed, when or where they provided such care, and/or the amount of time involved daily.

[79.] In **Ornal Roberts v Nassau Flight Services 2019/CLE/gen/01444**, *Charles, Snr. J.* supported the principle that a tort victim may recover damages for nursing care even where the caregiver has not foregone wages but has bared many more duties as a result of the tort victim's disability. In that case, the court allowed the plaintiff to recover damages for nursing care provided by his wife even where there was no evidence that she had foregone work to provide him with nursing care. However, evidence was found that the plaintiff's wife had taken on many extra duties to assist him. The court awarded damages at the minimum wage rate where it was easily ascertainable to decipher the amount of time spent daily and the period from which the wife had provided the nursing care to the plaintiff.

[80.] It is undisputed that the 2016 accident and the injuries sustained therefrom rendered the Plaintiff temporarily incapable of caring for himself for a period of time. This necessitated the need for his family members, including Monique Greenslade, Corderro Greenslade, and Terrelle Wilson to provide him with family and home care services. The family and home care services provided by them went beyond the regular familial duties. Indeed, many more extra duties had been taken on to assist the Plaintiff. It was irrelevant whether Monique Greenslade, Corderro Greenslade, and Terrelle Wilson incurred a loss or forewent work as a result of the family and home care services rendered by them to the Plaintiff. However, the Plaintiff's claim for the family care and home care services rendered by Monique Greenslade, Corderro Greenslade, and Terrelle Wilson is flawed for several reasons. Firstly, Terrelle Wilson was not called as a witness in these proceedings; thus, there was no corroboration as to the specific family care and home care services she provided to the Plaintiff. Apart from Terrelle Wilson not being called as a witness in these proceedings, there was no evidence led in these proceedings as to the commercial rate of care against which the sums are being claimed. Furthermore, there was no evidence as to the time daily

involved in which Monique Greenslade, Corderro Greenslade, and Terrelle Wilson provided family care and home care services to the Plaintiff. Therefore, the Court makes no award relative to the claim for special damages for the family care and home care services rendered to the Plaintiff by Monique Greenslade, Corderro Greenslade, and Terrelle Wilson. The Plaintiff has offered no evidence to assist the Court in making such an award. It requires more of him than to specially plead and particularize his special damages, he must also prove such special damages.

**Loss of Vacation Time – Monique Greenslade**

[81.] The Plaintiff claimed special damages for $4,854.81 representing 41 days loss of vacation time by Monique Greenslade when she had to accompany the Plaintiff abroad to undergo his surgical procedures.

[82.] The Plaintiff contended that his mother, Monique Greenslade, gave up forty-one (41) days of vacation to accompany him to the United States of America when he had to travel for his surgical procedures. Thus, she ought to be compensated for her loss of vacation time. The Plaintiff contended that had he not been required to travel to the United States of America for the surgical procedures that arose from the Defendant's wrongdoing, Monique Greenslade would not have had to give up her vacation time to accompany him. Thus, resulting in a deduction of Monique Greenslade's available vacation.

[83.] The Defendant contended that there ought not to be any award made for this head of loss. Monique Greenslade had not indicated any financial loss sustained in having to take vacation leave to accompany the Plaintiff. She was adamant that she applied for, was granted, and took the vacation leave to accompany the Plaintiff. When pressed about why she did not take unpaid leave, she inexplicably offered that doing so would mean that she would have lost money twice. Monique Greenslade would not have lost money twice if she had taken unpaid vacation leave. By doing so, she would have been entitled to recover her pay lost from taking an unpaid vacation leave while maintaining her vacation entitlement. By claiming vacation pay which Monique Greenslade admittedly received, the Plaintiff is seeking a double recovery.

[84.] The Court makes no award of special damages for the loss of vacation time for Monique Greenslade. It cannot be overstated that a defendant is not responsible for all loss and/or damage resulting from his wrongdoing; only that loss and/or damage that is a reasonable and foreseeable consequence of his wrongdoing. Not only is this head of loss too remote, but Monique Greenslade suffered no loss. She received her full vacation pay for the 41 days of vacation time she took to accompany the Plaintiff abroad.

**Loss of Earnings**

[85.] The Plaintiff claimed special damages for $71,000.00 representing the loss of income for 17 months and continuing for 71 months.

[86.] Apart from the Plaintiff's employment as a police motorcyclist attached to the Traffic Division of the RBPF, the Plaintiff took on extra duties with the Police Staff Association (PSA) of the RBPF where he provided escort services for private events such as funeral and wedding processions. The Plaintiff claimed that he was paid for these services directly by the PSA either in cash or by cheque. The Plaintiff further claimed that his income from the PSA was a minimum of $1,000.00 per month. The Plaintiff provided no evidence to prove such payments from the PSA. However, the Plaintiff produced a letter dated 15 August 2017 from Mr. Sonny Miller, then President of the PSA, which indicated that prior to his injuries from the 2016 accident, provided private engagement services for the PSA at the rate of $1,000.00 per month.

[87.] The Plaintiff contended that as a result of his injuries from the 2016 accident, he is permanently unable to perform his extra duties with the PSA. The Plaintiff's permanent inability was confirmed by Dr. Barnett, the Defendant's medical expert witness, who stated in his medical report dated 10 September 2020, that while the Plaintiff is not disabled and should be able to return to work with RBPF, it should be in sedentary or desk duty role. Thus, resulting in him incurring financial loss and requiring compensation for such financial loss. The Plaintiff's salary from the RBPF which he continued to receive after the 2016 accident was separate and apart from the payment for private services with the PSA.

[88.] The Plaintiff relied on the case of **Smith v Manchester City Council (or Manchester Corporation) (1974) 17 KIR 1** to support the position for the recovery of the funds loss from his inability to provide private services to the PSA. The decision of **Smith (supra)** is applied in cases for general damages and not special damages. In that decision, the court recognized that where a plaintiff sustained injury which reduced her competitiveness in the labour market if she lost her job, she was entitled to damages for future financial loss. This is notwithstanding that her employer had undertaken to keep her as far as it could. The court held that when assessing whether one's future earning capacity presents the risks of being reduced by an injury, the court must examine whether the injury is likely to put the individual at a disadvantage when seeking employment on the open market. The possible loss of earning capacity was not a notional loss but a real risk.

[89.] The **Smith v Manchester award** was explained by *Allen, P.* in **Cadet's Car Rental and Another v Pinder [2016] 2 BHS J. No. 82**. at para. 28:

> From the authorities of Smith v Manchester (supra), Moeliker v A Reyrolle & Co. Ltd. [1977] 1 WLR 132 and the 2015 case of Billett v Ministry of Defence [2015] EWCA Civ. 773, it is clear that a Smith v Manchester award is warranted where there is no present or foreseeable financial loss, but there is loss which the claimant is likely to suffer in the future by reason of decreased difficulty in obtaining or retaining new employment. It represents an award for damages which one is likely to suffer in the future by reason of increased difficulty in obtaining or retaining employment.

[90.] The Defendant conceded that the Plaintiff incurred a financial loss from his inability to perform the private services with the PSA. However, the Defendant contended that while the

Plaintiff did rely on the letter from the PSA dated 17 August 2017 which indicated that he earned $1,000.00 per month from private engagements, the Plaintiff conceded that such events would have been extremely limited, if held at all, due to the lockdown restriction resulting from the COVID-19 Pandemic. The Defendant invited the Court to take judicial notice of the complete national lockdown imposed in March 2020 and the subsequent restrictions imposed on the attendance of funerals and weddings and the prohibition against public gatherings and events resulting therefrom.

[91.] The Defendant further contended that the Plaintiff did not provide an update to the PSA letter, which is a lack of evidence for two critical periods, namely, the period from the date of the PSA letter in 2017 to the March 2020 beginning of the COVID-19 Pandemic in Nassau, The Bahamas, and the post COVID-19 era beginning in 2021/2022 when the national restrictions were lifted. The Plaintiff failed to provide any evidence whatsoever to demonstrate that any potential earnings during either period would have remained at $1,000.00 per month. In the absence of such evidence, the Defendant contended that the Court is constrained to award damages only up to the date of the PSA letter despite the fact that the accident occurred on 24 June 2016. The Defendant argued that inclusive of June 2016, a total of 15 months passed as of the date of the PSA letter, reflecting the sum of $15,000.00 as the provable loss of income.

[92.] Therefore, the Court makes an award of special damages of $15,000.00 representing the Plaintiff's loss of income from June 2016 to August 2017; the 15 months' period up to the date of the letter from the PSA dated 15 August 2017. The Court, having perused the submissions of the Plaintiff and the Defendant, preferred the submissions of the Defendant. The Plaintiff has only proved his loss of income up to the date of the PSA letter. Special damages must be specially pleaded, particularized, and proven. The Plaintiff failed to provide evidence to prove that his potential earnings post the PSA letter would have remained at $1,000.00 per month. For any avoidance of doubt, the above-mentioned award is not a **Smith v Manchester** award. In any event, any claim for a **Smith v Manchester** award would have undoubtedly failed as the Plaintiff failed to prove that his potential earnings post the PSA letter would have remained at $1,000.00 per month.

**Travel and Transportation Expenses**

[93.] The Plaintiff claimed special damages of $26,750.00 representing the costs of travel and transportation expenses for himself and the following individuals:

(1) Gerrard Wilson - $12,000.00;
(2) Monique Greenslade – $8,000.00;
(3) Corderro Greenslade – $4,750.00; and
(4) Terrelle Wilson – $2,000.00

[94.] The Court makes no award of special damages for the travel and transportation expenses claimed. While it is undisputed that the Plaintiff; his mother, Monique Greenslade; and his brother,

Corderro Greenslade had to travel to the United States of America on numerous occasions for the Plaintiff to undergo surgical procedures, and they no doubt incurred expenses for travel, food, accommodation, and transportation, it was incumbent on the Plaintiff to prove such head of loss. The Plaintiff failed to do so. Again, it cannot be overstated that special damages need not only be specially pleaded and particularized but must also be proven by independent and credible evidence.

[95.] As aforementioned, Terrelle Wilson was never called as a witness in these proceedings nor was her witness statement admitted into evidence by consent of the parties. Therefore, there is no evidence before the Court regarding her travel and transportation expenses incurred, if any. The Court was not allowed to verify the sums claimed by Terrelle Wilson.

[96.] The Plaintiff at paragraph 9 of his supplemental witness statement conceded that while he had to travel to and from Florida, United States of America on numerous occasions for review and follow-up medical care, he did not have the receipts or invoices to support his expenses for travel, accommodation, and general expenses.

[97.] With respect to Monique Greenslade and Corderro Greenslade, the Plaintiff sought to exhibit to his supplemental witness statement documents generally referred to as "Exhibits Monique Greenslade" and "Exhibits Corderro Greenslade". These documents were offered without any explanation of their authenticity. Instead of referencing and exhibiting to their respective witness statements any specific receipts for the sums which they expended, Monique Greenslade and Corderro Greenslade only exhibited letters to the Plaintiff providing a breakdown of the sums they purportedly spent. Both Monique Greenslade and Corderro Greenslade attested to having provided the Plaintiff's attorneys with copies of all the supporting documentation, but only some of the documents have been located and shown to them. However, Monique Greenslade and Corderro Greenslade failed to identify the specific documents which they purportedly verified.

**General Damages**

[98.] The principles applicable to general damages are not in dispute. *Lord Kerr* in the Privy Council case of **Scott v Attorney General [2017] 3 LRC 704 at 711** posited –

> **General damages must be compensatory. They must be fair in the sense of being fair for the claimant to receive and fair for the defendant to be required to pay - Armsworth v South Eastern Railway Co (1847) 11 Jur 758 at 760.** But an award of general damages should not aspire to be 'perfect compensation' (however that might be conceived)—Rowley v London and North Western Rail Co (1873) LR 8 Exch 221 at 231. It has been suggested that full, as opposed to perfect, compensation should be awarded—Livingstone v Rawyards Coal Co (1880) 5 App Cas 25 at 39 per Lord Blackburn:
>
> > "where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at 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"

As Dickson J, in the Supreme Court of Canada, observed in Andrews v Grand & Toy Alberta Ltd [1978] 2 SCR 229 at 261, applying this principle in practice may not be easy:

> "The monetary evaluation of non-pecuniary losses is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution."

Accepting and following this approach, the Court of Appeal in England and Wales in Heil v Rankin [2000] 3 All ER 138 at [23] said:

> "There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained, into monetary terms. Any process of conversion must be essentially artificial."

[Emphasis added]

[99.] General damages are assessed using the guidelines laid down by *Sir Hugh Wooding, CJ* in the case of **Cornilliac v St. Louis** (1965) 75 WIR 491. In this decision, *Wooding, CJ* advanced that the courts should take into consideration the following guidelines when assessing general damages, namely: (a) the nature and extent of the injuries sustained; (b) the nature and gravity of the resulting physical disability; (c) the pain and suffering which had to be endured; (d) the loss of amenities suffered; and (e) the extent of which the plaintiff's pecuniary prospects have been materially affected.

[100.] In **Ornal Gilbert (supra)** *Charles, Snr. J.* applied the principle established **Brown v Woodall** [1995] PIQR Q36 and affirmed that when calculating general damages under the various heads of general damages, regard must be had to the effect that each separate award for each separate head of injury may have on the size of the global sum.

[101.] The parties placed much reliance on the Judicial College Guidelines. While the Guidelines are useful they do not bind the courts in The Bahamas. The courts in The Bahamas must ultimately make an award which appropriate for The Bahamas: **Scott v The Attorney General (supra)** and **Angelina Turnquest v Stephen Rahming** 2013/CLE/gen/01409.

[102.] The Plaintiff's claim for general damages may be grouped into several sub-heads, each of which will be considered hereunder:

(i) Pain and Suffering, and Loss of Amenities (PSLA);
(ii) Loss of Consortium; and
(iii) Loss of Promotion;

[103.] The Plaintiff claimed that he suffered the following physical injuries as a result of the 2016 accident –

(i) injury to his ankle;
(ii) injury to his back;
(iii) injury to his knee; and
(iv) less serious injury to his left shoulder

[104.] To support the above-mentioned injuries as alleged, the Plaintiff referenced and exhibited to his witness statement reports from numerous physicians whom he attended to or sought medical treatment from after the 2016 accident. These physicians and the dates of their respective reports are as follows:

(i) Report of Dr. Dane Bowe dated 24 June 2016;
(ii) Report of Dr. Robert L. Gibson dated 16 March 2017;
(iii) Report of Dr. Kathryn DeSouza dated 28 November 2016;
(iv) Amar D Rajadhyaksha, MD, dated 18 July 2017;
(v) Jennifer L. Boeri, DPM, dated 19 March 2018;
(vi) Dr. Timothy Barrett dated 11 April 2016;
(vii) Jennifer L. Boeri, DPM, operative report dated 9 September 2019;
(viii) Operative Report of Dr. Ross A. Wodicka, MD, dated 26 May 2021; and
(ix) Reports of Dr. Magnus Ekedede, MD, FAANS, FACS, dated 15 February 2021 and 31 March 2022.

[105.] However, for reasons known only to the Plaintiff, only Dr. Ekedede was called and produced as a witness in these proceedings. The Defendant alleged that the Plaintiff only sustained injuries to his ankle and knee from the 2016 accident. The Defendant contends that the Plaintiff's injuries to his back and shoulder were pre-existing injuries, which had little to no nexus to the 2016 accident. The Defendant relied on the medical opinion of Dr. Barnett to support the above-mentioned position.

[106.] The Court will not hold the Defendant liable for any pre-existing condition, if any, that was not worsened by or has nothing to do with the 2016 accident. The Defendant would only be responsible for such injuries resulting from the 2016 accident. The principle known as the "take your victim as find him" principle or "eggshell" principle operates: see **Forbes v Smith** [2009] 1 BHS J. No. 18.

[107.] The Defendant contended in the absence of an agreed bundle of documents containing the aforesaid reports, the Plaintiff faces a significant evidentiary challenge by the fact that the only medical expert produced on his behalf was Dr. Ekedede. Thus, the Plaintiff is wholly subject to the Court's considerations as to what weight, if any, to give to the contents of the reports of the other physicians. The Plaintiff cannot be allowed to gain any advantage from his failure to produce the physicians who authored the reports to attest to them and be tested under cross-examination in respect of their expertise and the accuracy and reliability of their findings. The mere reference in

the Plaintiff's witness statement to these reports was insufficient to surmount this challenge. Moreover, the reference by Dr. Ekedede to some of the reports did not assist the Plaintiff in any limitations he is subject to, having failed to produce those physicians as witnesses.

[108.] The Defendant further contended that the Plaintiff could not complain if any adverse inferences were drawn from his failure to produce any of the physicians who authored the reports. Likewise, the Plaintiff could not rebut any evidence adduced by the Defendant in these proceedings in respect of the reports. Dr. Ekedede's reports primarily concern his treatment of the Plaintiff from an accident in 2014, and his dispute with certain findings of Dr. Barnett's Reports. The Dedenfant contends that the only independent and credible evidence before the Court that can assist with the diagnosis of the Plaintiff's injuries and his prognosis is that of Dr. Barnett. Having regard to Dr. Barnett's evidence, the Plaintiff has only proven that the injuries to his ankle and knee resulted from the 2016 accident. The Defendant relied on **British Railways Board v Herrington** [1972] AC 877 and **Mackenzie v Alcoa Manufacturing (GB) Ltd.** [2019] EWCA Civ 2110.

[109.] There was no agreed bundle of documents in these proceedings and the Defendant's evidentiary challenge remains a live issue. The physicians who authored the medical reports listed in paragraph 104 (i) to (viii) above were not called as witnesses in these proceedings. The Court is well aware of the legal principle that primary evidence remains the best form of evidence. However, the Court is satisfied that the above-mentioned medical reports may be entered into these proceedings through secondary evidence pursuant to the Evidence Act, Chapter 65, Sections 41 and 43(e). Secondary evidence of documents to be given in proceedings, *inter alia*, through the oral accounts of the content of the documents may be given by a witness who has seen the document. These medical reports were utilized, referenced, and exhibited, without objection, during the testimonies of the various witnesses in these proceedings, including the Defendant's medical expert, Dr. Barnett. It would be unfair for the Court to uphold the Defendant's evidentiary challenge raised, in closing submissions, and not admit the medical reports into evidence on the basis that their authors were not called to testify in these proceedings. The Court may make reference to the medical reports and consider them for their relevance, full import, and effect and give to them such weight, if any, as in the light of any other evidence and any cross-examination in these proceedings: **Colina Insurance Limited v Enos Gardiner** SCCivApp & CAIS No. 117 of 2015.

[110.] While the Court admitted the medical reports listed in paragraph 104 (i) to (viii) hereof as secondary evidence only two medical experts in these proceedings, that is, Dr. Ekedede and Dr. Barnett. It was only Dr. Ekedede and Dr. Barnett's evidence that had the opportunity to be attested to and have their veracity tested under cross-examination. Therefore, the Court gives full weight and consideration to the medical evidence of Dr. Ekedede and Dr. Barnett over the medical reports listed in paragraph 104 (i) to (viii) hereof.

[111.] There is a stark contrast between the evidence of Dr. Ekedede and Dr. Barnett. The Plaintiff invited the Court to prefer Dr. Ekedede's evidence over Dr. Barnett's evidence. The Defendant

invited the Court to do the reverse. The Court found both Dr. Barnett and Dr. Ekedede to be credible witnesses. However, the Court, though not in its entirety, preferred the medical expert evidence of Dr. Barnett. Dr. Ekedede's evidence primarily concerned his treatment of the Plaintiff from an accident in 2014, and his dispute with certain findings of the Barnett Reports. Dr. Barnett's evidence proved to be of most assistance to the Court in determining the diagnosis and prognosis of the Plaintiff's injuries. Having preferred Dr. Barnett's evidence, the Court finds that the Plaintiff has only proven that the injuries to his ankle, knee, and back resulted from the 2016 accident. While the injury to the Plaintiff's back could have reasonably been a pre-existing condition resulting from his 9 June 2013 accident, the 2016 accident more than likely exacerbated the injury. This is particularly so given the evidential account of Corporal 2896 Devaughn Fraser, which was not challenged or controverted. With respect to the injury to the Plaintiff's shoulder, the Court finds that this injury did not result from the 2016 injury but from the Plaintiff's previous accidents.

[112.] The Court has considered the submissions advanced by the parties in respect to the multiple injuries from a PSLA perspective. The Plaintiff contended that the correct methodology for collecting the PSLA would to be to calculate and assess the aggregate PSLA for each of his injuries without discount as in the case of each of the categories of injury suffered. The effect of each injury made it more difficult for the Plaintiff to cope with the calculation of the PSLA ought to be based on the length of time between the Plaintiff's first surgery, 24 June 2016, and last surgery, September 2021, with the other categories of injury making an allowance for the size of the aggregate allowance.

[113.] Alternatively, the calculation of the PSLA ought to be based on the calculation of the aggregate of the plaintiff's multiple injuries with a minimum discount of under 10%, the norm for discounts being 10% to 20%. The Plaintiff further contended in the alternative that the PSLA related to the Plaintiff ought to be assessed based on the overall impression of the totality of the Plaintiff's injuries. The Plaintiff relied on **Salder v Filipiak and another** [2011] EWCA 1928; **Sands v Hamilton** (2016) NIQB 44 and **Smith v Jenkins (trading as Rod Jenkins Marine) [**2003] All ER (D) 159 (Jun); **George v Stagecoach** [2003] EWHC 202; **Stevens v Simon** (1987) Times 20 November CA; **Bracken v Lancashire County Council Education Authority** (Unreported), 1st April, 1987, QBD; **Brown v Woodall** [1995] PIQR Q36; **Lloyd v Lloyd** 21 March 1990; and **Santos v Eaton Square Garage Ltd. [**2007] EWCA Civ 225.

[114.] The Defendant contended that the best approach to calculate the Plaintiff's PSLA was espoused by *Sir John May* in **Brown v Woodall [1995] PIQR Q36**. **Brown (supra)** was referred to in **Sadler (supra)** where *Etherton LJ* pronounced:

> … I respectfully agree that the learned judge's approach adding up the various figures for the awards she thought appropriate for the various different injures could well lead one to an award, which, compared with other awards, is in the aggregate larger than is reasonable.
>
> In this type of case, if there are a number of separate injuries, all adding up to one composite effect upon the Plaintiff, it is necessary for a learned judge, no doubt having considered the various injuries and fixed a particular figure as reasonable compensation for each, to stand back and have a look at

what would be a global aggregate figure and ask if it is reasonable compensation for the totality of the injury to the plaintiff or whether it would in aggregate be larger than was reasonable?

[115.] The **Judicial Studies Board Guidelines on Assessment of Damages 14th ed.**, which was provided by the parties, provided significant assistance to the Court in determining the appropriate award for each of the Plaintiff's injuries. The Court considered the authorities advanced by the parties and found that the Judicial College Guidelines provided adequate insight into the Plaintiff's injuries. The Court considered the Plaintiff's injuries as outlined in the medical reports of Dr. Barnett and Dr. Ekedede alongside the Judicial College Guidelines and have determined that the Plaintiff's injuries fall within the following categories below.

(i) Knee: Less Severe Injury – "There may be continuing symptoms by way of pain and discomfort and limitation of movement or instability or deformity with the risk that degenerative changes and the need for some remedial surgery may occur in the long term as a result of damage to the kneecap, ligamentous, or meniscal injury or muscular wasting." These injuries are assessed in the range £20,880 to £34,660 [$26,669.17 to $44,269.80]. The Court would place the Plaintiff in the mid-range of this scale and award $42,500.00.

(ii) Ankle: Severe – "Injuries necessitating an extensive period of treatment and/or lengthy period in plaster or where pins and plates have been inserted and there is significant residual disability in the form of ankle instability to walk. The level of this award within the bracket will be determined in part by such features as a failed arthrodesis, the presence of or risk of osteoarthritis, regular sleep disturbance, unsightly scarring, impact on employment, and any need to wear special footwear." These injuries are assessed in the range £24,950 to £39,310 [$31,867.61 to $50,209.05]. The Court would place the Plaintiff in the upper range of this scale and award $47,000.00.

(iii) Back: Moderate – "(b)(ii) 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 condition, usually by five years or more, or prolapsed laminectomy or resulting in repeated relapses. 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." These injuries are assessed in the range £9,500 to £21,100 [$12,133.96 to $26,950.16]. The Court would place the Plaintiff in the lower range of the scale provided it findings that this injury resulted from the exacerbation of a pre-existing condition. The Court would award $14,000 for this injury.

(iv) Post-Traumatic Stress Disorder: Less Severe – "In these cases, a virtually full recovery will have been made within one to two years and only minor symptoms will persist over any longer period." These injuries are assessed in the range £3,000 to £6,225 [$3,831.78 to $7,950.94]. The Court, having perused the evidence of the Plaintiff and Dr. Barnett and having heard their evidence tested under cross-examination, found the Plaintiff's loss to have been short-lived. The Court assessed the Plaintiff's injury to be upper range and would award $6,500.00.

(v) Scarring: "A large number of awards for a number of noticeable laceration scars, or a single disfiguring scar, of leg(s) or hand(s), or back or chest." These injuries are assessed in the range of £6,240 to £18,120 [$7,970 to $23,143.93]. Having regard to the other awards, the Court would assess this loss to the plaintiff at $8,500.

[116.] The aggregate assessment of the individual injuries amounts to B$118,500. The Court, having adopted the approach advanced in **Brown (supra)** concerning assessing the quantum of the Plaintiff's multiple injuries, finds that this global figure is a reasonable compensation for the entirety of the Plaintiff's injuries.

[117.] The parties have sought the Court to include a **Heil (supra)** uplift of 10% into the PSLA. However, the Court was not convinced that the inclusion of a 10% uplift was appropriate in this matter. The Court finds guidance the Privy Council case of **Scott (supra)** wherein it was affirmed that an uplift was not automatic where the applied the Judicial College Guidelines in assessing damages. The parties provided no reasonable justification for the uplift. The sum of $118,500 seems to be fair and reasonable compensation to the Plaintiff having regard to the circumstances of his case.

**Loss of Consortium**

[118.] The Plaintiff also claimed general damages for loss of consortium. He advanced that his sex life has been seriously impacted by the 2016 accident. The Plaintiff contended that before the 2016 accident, he and his then fiancé (now wife) enjoyed a healthy and normal sex life. However, the 2016 accident led him to have doubts of whether he would be able to perform sexually for his wife as he once did. The Plaintiff contended that the doubts continue to frustrate him.

[119.] In the Bahamian Supreme Court decision of **Wells et al v Knowles et al** BS 2003 SC 156, *Isaacs, J. (Actg.)* provided guidance on what is meant as consortium in law. His Lordship citing **Best v Samuel** [1956] 2 All ER 116 postulated that consortium means companionship, love, affection, comfort, mutual services and sexual intercourse taken together. The loss of one of those element does not amount to loss of consortium.

[120.] The Plaintiff's claim for loss of consortium without merit. Firstly, the Plaintiff did not call his wife, Terelle Wilson, as a witness in these proceedings to attest to and/or corroborate how the 2016 accident would have affected their relationship. The Plaintiff further provided no medical evidence to advance how the 2016 accident would have affected his ability to perform sexually, inter alia, the extent of his purported inability, and how and when the inability was resolved. Moreover, evidence established that the Plaintiff had fathered 4 children, 2 of which were with his wife, Terelle Wilson. The latter two were conceived after the 2016 accident. There was no evidence that the children were adopted or fathered by artificial means. It is noted that in paragraph 36 of his Witness Statement filed on 6 May 2022, the Plaintiff indicated that his youngest child would have been eleven (11) months at that time.

**Loss of Promotion**

[121.] The Plaintiff claimed general damages for loss of promotion prospects within the RBPF. The Plaintiff contended that as a result of the 2016 accident and his incapacitation therefrom, he had missed three (3) promotion exercises, namely, in 2016, 2018, and 2021. He further contended

that many of the officers with whom he would have joined the RBPF would now have received promotions taking them to the ranks of corporal and superintendent. The Plaintiff advanced that in 2012, he was promoted from constable to corporal; and in 2015, passed the exams which would have made him eligible to be promoted to sergeant. The Plaintiff further advanced that due to his performance record, work ethic, and educational background he was a suitable candidate for promotion but for the 2016 accident. The Plaintiff ultimately contended that it went without saying that as he was not promoted, his salary would have remained the same as it was at the date of the accident.

[122.] The Plaintiff provided no independent and credible evidence, documentary or otherwise, to reasonably demonstrate to the Court a causal connection from his lack of promotion to the 2016 accident. Therefore, the Plaintiff's claim for general damages for loss of promotional opportunity must fail.

**CONCLUSION**

[123.] The Court, having regard to the foregoing reasons listed above, makes the following award to the Plaintiff as follows –

| | | |
|---|---|---|
| (i) | Special Damages - | $ 15,000.00 |
| (ii) | General Damages - | $118,500.00 |
| | **Total:** | **$133,500.00** |

[124.] The Plaintiff has already received an interim payment award of $31,000.00 from the Defendant. Thus, the total award to the Plaintiff must therefore be adjusted to discount for the interim payment award. Thus the ultimate judgment award ordered to the Plaintiff would be **$102,500 ($133,500.00 - $31,000.00)**.

[125.] Interest shall run on the ultimate award of **$102,500** at the rate of 3% from the date of the filing of the specially Indorsed Writ of Summons until judgment and shall accrue thereafter at the statutory rate of 6.25%.

[126.] The Plaintiff being the successful party in these proceedings shall be entitled to his reasonable costs fit for two Counsel to be assessed if not sooner agreed by the parties.

Dated this 27 day of January, 2025

Constance A. Delancy