

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Common Law and Equity Division
Claim No. 2019/CLE/gen/00260

BETWEEN

CHERELLE CARTWRIGHT

Claimant

AND

SAPODILLA OF WEST BAY LTD.

Defendant

Before: Registrar Renaldo Toote,
Appearances: Carl Bethel, KC of Counsel for the Claimant
Cheryl Whymms of Counsel for the Defendant
Hearing dates: 18 February 2026

ASSESSMENT OF DAMAGES

Introduction

[1]. This matter concerns an assessment of damages in an action commenced by Writ of Summons claiming personal injuries sustained by the Claimant as a result of an incident which occurred on 16 July 2016 at the Defendant's restaurant premises (the "Index Incident").

[2]. On 30 March 2022, the Claimant obtained a Default Judgment against the Defendant which established liability and initiated the assessment proceedings. The Court is now tasked with assessing the appropriate quantum of damages due to the Claimant, taking into consideration all evidence and submissions presented.

[3]. The assessment of damages proceeded by way of *viva voce* evidence, written submissions, documentary and medical reports. The Claimant relied on the medical report of Dr. Colleen Fitzcharles, Plastic and Reconstructive Surgeon, the discharge report of Dr. Novia Carter, Psychologist, and the evidence of Mr. Esau McKenzie as to her loss of earnings.

[4]. Having reviewed the medical evidence, I accept Dr. Fitzcharles and Dr. Carter as reliable witnesses as to the nature and extent of the Claimant's physical and psychiatric injuries respectively. Both reports were admitted by consent and were contemporaneous with the treatment administered.

Factual Background

[5]. At all material times, the Claimant was a patron at the Defendant's restaurant, Sapodilla Fine Dining Restaurant, on West Bay Street, Nassau.

[6]. Ms. Cartwright testified that she was attending a class reunion function and sustained burn injuries when, in the course of the preparation or presentation of a flaming dish, the server accidentally ignited her clothing. Ms. Cartwright further alleges that, as a result of the Index Incident, she suffered:

- i. Pain, suffering and loss of amenities;
- ii. Psychiatric injury;
- iii. Special damages; and
- iv. Future medical expenses.

[7]. In her Amended Statement of Claim, the Claimant pleaded that she suffered partial-thickness second-degree burns to her right thigh affecting 5% of her body mass and because of the Defendant's negligence, also suffered post-traumatic stress disorder, major depressive affective disorder, special damages, and consequential financial loss arising therefrom.

[8]. The Claimant was treated by Dr. Fitzcharles, who recorded a 5% partial-thickness burn to the right thigh and leg. The wounds healed by late July 2016, and Ms. Cartwright had a

normal gait by 31 August 2016. Dr. Fitzcharles' final review recorded residual pigmentation changes with a soft, flat scar.

[9]. The Claimant was also treated by Dr. Carter, who diagnosed Post-Traumatic Stress Disorder and Major Depressive Affective Disorder, for which the Claimant underwent therapy over a period of approximately five months.

[10]. By her Submissions, the Claimant seeks a total award of \$150,932.00, exclusive of interest and costs, comprising \$58,625.00 for physical pain, suffering and loss of amenity, \$73,700.00 for psychiatric injury, and \$18,607.24 for special damages.

[11]. The Defendant submits that the Claimant's case is materially overstated and that a fair global award for general damages ought to fall within the range of \$15,000.00 to \$20,000.00, with only such special damages as have been strictly proved being recoverable.

[12]. The Defendant's position on assessment is not that no injury occurred, but that the objective medical evidence establishes a 5% partial thickness burn to the right thigh only, with rapid healing, no surgery, no lasting functional impairment, and psychiatric symptoms that resolved after treatment. The Court is therefore concerned with the proper valuation of the injury proved, the extent of any psychiatric sequelae, and which items of special damage have been established on the evidence.

The Injury and Medical Evidence

[13]. The principal medical evidence before the Court consists of the report of Dr. Colleen Fitzcharles, Plastic and Reconstructive Surgeon, and the discharge report of Dr. Novia Carter, Psychologist. Both reports were admitted by consent and constitute the most reliable objective medical evidence before the Court.

[14]. I accept the report of Dr. Fitzcharles as the best evidence of the nature, extent, treatment and course of recovery of the physical injury. It is contemporaneous with the clinical treatment administered, it records sequential follow-up examinations, and it properly distinguishes between the Claimant's subjective complaints and the clinician's objective findings. The report records a 5% partial thickness burn to the right thigh and leg, healing

by late July 2016, a normal gait by 31 August 2016, and residual pigmentation changes with a soft, flat scar by the date of final review.

[15]. On the accepted medical evidence, I find that the Claimant's clinically verified burn injuries were confined to the right thigh and leg, as documented by Dr. Fitzcharles. The evidence does not establish burn injuries to the Claimant's face, hair, wrist, midriff, or any other area of her body. I accept that the incident was sudden and frightening, that the Claimant's clothing ignited, and that she perceived the flames as extensive. Those matters bear upon the assessment of pain, shock and psychiatric conditions; they do not, however, enlarge the medically proved physical injury beyond that established by the agreed medical report.

[16]. I further accept the report of Dr. Carter as establishing that the Claimant suffered psychiatric symptoms diagnosed as Post-Traumatic Stress Disorder and Major Depressive Affective Disorder during the period of treatment, in respect of which she underwent therapy over a period of approximately five months. That psychiatric injury was a real and compensable consequence of the Defendant's negligence.

[17]. I do not, however, find that the Claimant has proved a continuing psychiatric disorder subsisting after her discharge from treatment in 2017. There is no subsequent psychiatric report, no evidence of continuing treatment, no evidence of medication, and no medical opinion establishing continuing post-traumatic stress disorder or depression. I accept that the Claimant remains fearful of open flames and that this affects her comfort in certain settings. That residual fear is reflected in the award made below, but it does not warrant treating the psychiatric injury as chronic, severe, or continuing in the manner advanced on her behalf.

[18]. I find the Claimant's evidence to be genuine as to the occurrence of the incident; the pain she experienced, the distress caused to her, and the embarrassment occasioned by the residual pigmentation. Where her evidence conflicts with the objective medical record as to the overall extent or duration of the injury, I prefer the medical evidence.

The Law

[19]. The general principle when assessing damages in a personal injury action is that a Claimant is entitled to full compensation for all pecuniary and non-pecuniary losses suffered as a result of the tort, subject to her duty to mitigate and to strict proof. In *Livingstone v Rawyards Coal Company* (1880) 5 App. Cas. 25, Lord Blackburn said at page 30:

“I do not think there is any difference of opinion as to it being a general rule that, 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 the wrong for which he is now getting his compensation or reparation.”

[20]. In *Cornilliac v St. Louis* (1965) 7 WIR 491, a classic leading West Indian authority on the assessment of damages, the Court of Appeal of Trinidad and Tobago held that the factors which ought to be considered by a court when assessing general damages for personal injuries are: (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering which had been endured; (iv) the loss of amenities suffered; and (v) the extent to which, consequently, the injured person’s pecuniary prospects have been materially affected.

[21]. Counsel referred the Court to several authorities. For the Claimant, Mr. Bethel, KC relied principally on *Stocks v Wandsworth London Borough Council* (unreported, 2001), which concerned an infant who sustained scald burns affecting approximately 5%–6% of the body, including visible areas. In response, Mrs. Whyms, Counsel for the Defendant, relied on *Heap v Richards* [2010] EWCA Civ 389, a lower-limb burn case involving injuries said to be more serious than those sustained here, including a full-thickness burn and permanent sensory loss. She also relied on the psychiatric injury comparators *Waugh v Newham London Borough Council* [2002] EWHC 802 (QB) and *Re Hislop* (Criminal Injuries Compensation Authority, Bristol, Peter Weitzman QC, 28 November 2000), noted in *Kemp & Kemp*, R.93 (December 2004).

[22]. I find that *Stocks v Wandsworth (ibid)* is not the closest comparator to the present case.

Although the percentage of body surface area affected is broadly similar, the injuries in that case were sustained by an infant and extended to multiple visible areas, including the lower face, neck, upper chest and arm. Those features materially increase both the gravity of the injury and its likely impact over the claimant's life and distinguish that case from the present one.

[23]. I find that *Heap v Richards [2010] EWCA Civ 389* as described in the Defendant's submissions, is the closer comparator in anatomical terms, concerning as it did lower-limb burn scarring. It was, on the Defendant's account, a more serious injury than the present case, involving full-thickness injury and permanent loss of sensation. *Heap v Richards (supra)* accordingly assists the Court as a proportionality cross-check against the award proposed on behalf of the Claimant for the physical burn injury.

[24]. As to psychiatric injury, *Waugh v Newham London Borough Council [2002] EWHC 802 (QB)* is instructive, though materially more serious on its facts. In that case, the claimant's post-traumatic stress disorder and related psychiatric symptoms persisted for years and affected her employment. In the present case, the medical evidence establishes a psychiatric injury requiring treatment, but not a continuing psychiatric disorder following discharge in 2017. *Waugh* accordingly supports the compensability of psychiatric injury arising from a frightening incident but does not support an award at the level sought on behalf of the Claimant, whose psychiatric evidence ends after a comparatively short course of treatment.

[25]. I have also considered, as a persuasive upper cross-check, *Laura Clarke v Adam Kalecinski [2022] EWHC 488 (QB)*, which concerned materially more serious scarring and medical sequelae, including life-threatening sepsis, skin grafting, and intimate and visible scarring with occupational consequences. That authority is useful principally as a point of comparison. It demonstrates that, although the present injury was serious for this Claimant, it lacks the aggravating features that justified a substantially higher award in that case.

General Damages

Pain, suffering and loss of amenity

[26]. The Claimant suffered a frightening burn injury. The burn was a second-degree, partial-thickness burn affecting approximately 5% of total body surface area. It required treatment and dressing, and was sufficiently significant to cause pain, distress, temporary limitation of movement, and residual pigmentation. I accept the Claimant's evidence of pain about the knee and of difficulty during the period of recovery.

[27]. Against that, the injury healed rapidly. The wounds were fully healed by late July 2016, and the Claimant had a normal gait by the one-month review. No surgery was required, and there is no permanent functional impairment. The residual effect of the injury is principally cosmetic, comprising pigmentation change and a soft, flat scar.

[28]. Having regard to the medical evidence, the comparable authorities discussed above, and the requirement of proportionality, I assess general damages for physical pain, suffering and loss of amenity at **\$20,000.00**.

Psychiatric injury

[29]. The Claimant suffered post-traumatic stress disorder and depressive symptoms consequent upon the incident and required counselling over a period of approximately five months. That psychiatric injury was a real and compensable consequence of the Defendant's negligence.

[30]. The award must, however, reflect the medical evidence as it stands. The Court is not satisfied on the evidence before it, that the Claimant has proved a continuing psychiatric disorder subsisting after 2017. Her continuing fear of open flames and avoidance of cooking environments is recognized and is reflected in the award, but the absence of further medical evidence requires the Court to treat the psychiatric injury as resolved, or substantially resolved, following the course of therapy undergone.

[31]. Therefore, I assess damages for psychiatric injury at **\$10,000.00**.

[32]. The total award for general damages is accordingly **\$30,000.00**.

Special Damages

[33]. Special damages must be specifically pleaded and strictly proved. In *Lubin v Major* [1992] BHS J. No. 22, *Henry JA* held that it is not sufficient for a Claimant merely to plead special damage and thereafter recite the same facts on oath without credible supporting evidence.

[34]. Learned counsel for the Claimant submits that the amended figure of \$18,607.24 falls to be treated as admitted, no Reply having been filed to the Amended Statement of Claim. I reject that submission for the purposes of this assessment.

[35]. Special damages are quantified damages, which a Claimant has already spent as a result of the damage and loss suffered. This type of damage must therefore be pleaded for, particularized and proved. This was the view of Lord Diplock in *Ilkew v Samuels* [1963] 2 All E.R. 879, [1963] 1 WLR 991 where he said:

“Special damage in the sense of a monetary loss which the Claimant has sustained up to the date of trial must be pleaded and particularized...it is plain law...that one can recover in an action only special damage which has been pleaded, and of course, proved.”

[36]. At the assessment hearing, the Claimant adduced documentary evidence, relied on Mr. Esau McKenzie’s testimony, addressed each item claimed, and sought to prove the resulting losses. The Defendant cross-examined the witnesses on those items. Mr. Bethel, KC submits that the amended figure of \$18,607.24 falls to be treated as admitted, since no Reply was filed to rebut the Amended Statement of Claim.

[37]. I do not accept that submission. The assessment proceeded on the express footing that each item of special damage remained disputed and required proof; the Claimant produced documents and witness evidence for that purpose, and the Defendant tested that evidence by cross-examination. It would therefore be inconsistent to treat the amended sum as conclusively admitted merely because no Reply was filed. Put simply, a party cannot be required to prove each item at the hearing and then, after the evidence has been tested, rely on the absence of a pleading to say that no proof was necessary. The amended special damages must accordingly be assessed by reference to the evidence.

[38]. I therefore assess special damages item by item.

Medical expenses and reports

[39]. The Defendant agreed the medical receipts at Tabs 3, 4, 5, 9 and 12 of the trial bundle.

Those receipts total **\$4,365.86**. I find them sufficiently proved, and they are allowed in full.

[40]. The Court treats that sum as covering the agreed receipts for medical treatment, psychiatric treatment, and medical reports identified in the submissions. No further sum is awarded under overlapping medical categories, so as to avoid duplication of recovery.

Future laser treatment

[41]. The Claimant relies upon a proposal from the Art of Skin Clinic for resurfacing laser treatment in the sum of \$1,932.00. I disallow this item.

[42]. As a matter of law, future corrective treatment can be recoverable if it is a reasonable restorative measure. The general principle is that a claimant may recover the reasonable cost of restorative treatment if it is medically justified, reasonably necessary, likely to be undertaken, and proportionate in cost. In *XX v Whittington Hospital NHS Trust* [2020] UKSC 14, the UK Supreme Court reaffirmed that damages should, so far as money can, restore the claimant to the position she would have been had the tort not occurred, provided the proposed treatment and its cost are reasonable. Similarly, in *Laura Clarke v Adam Kalecinski* [2022] EWHC 488 (QB), future scar-correction procedures were supported by detailed expert evidence and costed as part of the claimant's restorative treatment.

[43]. In order for the Claimant to recover the cost of future laser treatment as a consequential medical expense, it was necessary not merely to exhibit a quotation, but to establish by proper pleading and evidence that such treatment was a reasonable restorative consequence of the injury proved. The Court would ordinarily expect the future treatment to be specifically pleaded, with the amount claimed identified, and supported by competent expert medical evidence addressing the nature of the residual scarring or pigmentation, its causal connection to the accident, the clinical justification for the proposed treatment, the likelihood of material benefit, the number and nature of sessions required, the availability of alternative treatment, and the likelihood that the Claimant would in fact undergo the procedure. The cost must also be shown to be reasonable.

[44]. While the law does permit recovery for future corrective treatment where it is reasonably required to restore the claimant, so far as money can do so, to the position she would have been in absent the wrong, the evidential burden remains on the Claimant to prove that the proposed treatment is medically justified and not merely cosmetically desirable.

[45]. However, the present claim does not satisfy that standard of proof. The proposed laser treatment was not pleaded with sufficient clarity as a future medical expense; the material relied upon does not establish that the treatment is medically necessary rather than cosmetically desirable. Further it does not address the likely efficacy of the treatment or the likelihood that it will in fact be undertaken and is unsupported by the kind of developed expert evidence that was present in *Clarke (ibid)*. In those circumstances, the burden of proof is not discharged, and this item is disallowed.

Loss of earnings from musical performances

[46]. The Claimant claims lost earnings arising from her inability to perform at scheduled musical engagements in July 2016. Mr. McKenzie confirmed that the spreadsheet relied upon related to engagements at which the Claimant had been booked to perform. The Claimant accepted a deduction of \$100.00 for set-up fees, reducing the sum claimed from \$8,000.00 to \$7,900.00.

[47]. The evidence establishes that prospective performance opportunities existed and that the Claimant was unable to perform during the immediate period of recovery. The claim is not, however, strictly proved in the full amount. There were no written contracts, invoices, receipts, deposit records, bank records, or other documentary proof of payment, and there is insufficient evidence distinguishing the gross value of the engagements from the Claimant's personal earnings.

[48]. Although the Claimant has not strictly proved the full amount of the musical-performance earnings claimed, I am not satisfied that the evidence should be rejected altogether as wholly speculative. The evidence of Mr. McKenzie and the schedule of bookings is sufficient to establish that the Claimant lost a real opportunity to earn income from scheduled engagements during the relevant recovery period. However, the amount of that

loss cannot be accepted in full because there were no contracts, invoices, receipts, bank records, or other reliable documentary evidence establishing what remuneration would in fact have been paid to the Claimant personally, as distinct from the gross value of the engagements.

[49]. In those circumstances, the Court is entitled to assess the loss on a discounted basis by valuing the lost chance rather than awarding the full pleaded figure. That approach is consistent with the principle in *Allied Maples Group Ltd v Simmons & Simmons* [1995] 1 WLR 1602, that where loss depends upon the uncertain actions of third parties, the court may evaluate the substantial chance of a beneficial outcome rather than require certainty; and with *Chaplin v Hicks* [1911] 2 KB 786, the court recognized that a claimant may recover substantial damages for the loss of a valuable opportunity even where the precise outcome cannot be proved with certainty. Doing the best I can on the evidence, I therefore allow a discounted figure of **\$5,000.00** for this head of loss.

[50]. That figure reflects the credible evidence that engagements were in fact lost, discounted to reflect the absence of strict documentary proof of the full amount claimed and the uncertainty as to net earnings.

Previous Attorney's fees

[51]. The claim for previous attorney's fees in the sum of \$2,850.00 is disallowed. Such fees are not proved as a recoverable head of special damages; absent a distinct legal or evidential basis, which has not been established here, they are proper matters for costs and not for an award of compensatory damages.

Loose-fitting wardrobe

[52]. The claim for \$600.00 in respect of loose-fitting clothing is disallowed. The evidence does not identify the garments, the dates of purchase, the amounts paid, the medical necessity for the purchase, or a causal connection sufficient to satisfy strict proof.

Damaged dress

[53]. The claim for \$400.00 for the damaged dress is not proved in the sum claimed. I accept, however, that it is *prima facie* established on the evidence that the Claimant's dress was

damaged in the incident when her clothing caught fire. In such a case, the absence of exact proof of value does not invariably require the Court to reject the claim altogether. The law requires as much certainty and particularity in proof of damage as is reasonable having regard to the nature of the case. See *Ratcliffe v Evans* [1892] 2 QB 524.

[54]. Here, although the Claimant has not proved the identity, purchase price, age, condition, or precise value of the garment at the date of loss, I am satisfied that some real loss was suffered. Doing the best I can on the limited evidence and making a conservative allowance that reflects the probable used value of the damaged garment rather than an unproved replacement cost, I allow \$150.00 under this head.

Transportation

[55]. The claim for \$100.00 for transportation is disallowed. The evidence establishes that the Claimant was transported to hospital by a friend; it does not establish that she paid, incurred, or became liable to pay the sum pleaded.

Cost of meal

[56]. The claim for \$60.00 for the cost of a meal is disallowed. There is insufficient evidence before the Court to establish this item as a recoverable loss caused by the injury.

[57]. Special damages are accordingly allowed as follows:

Item	[58]. Amount Allowed
Agreed medical / psychiatric / report receipts	\$4,365.86
Lost earnings, discounted	\$5,000.00
Future laser treatment	\$0.00
Previous attorney's fees	\$0.00
Loose-fitting wardrobe	\$0.00
Damaged dress	\$150.00
Transportation	\$0.00
Meal	\$0.00
Total special damages	\$9,515.86

Conclusion and Order

[59]. The damages awarded are as follows:

Item	Amount Allowed
Pain, suffering and loss of amenity — physical injury	\$20,000.00
Psychiatric injury	\$10,000.00
Special damages	\$9,515.86
Total damages	\$39,515.86

[60]. Judgment is accordingly entered for the Claimant in the principal sum of **\$39,515.86**.

Interest

[61]. The Claimant claims interest pursuant to the Civil Procedure (Award of Interest) Act (Ch. 80). The Court accordingly orders that the post-judgment interest be calculated at the statutory rate of interest being 6.25% and pre-judgment interest at the rate of 2%.

[62]. Interest on special damages shall run from the date of loss or expenditure, as applicable, to the date of judgment, at the statutory rate.

[63]. Interest on general damages shall run from the date of service of the Writ of Summons and Statement of Claim to the date of judgment, at the statutory rate.

[64]. Post-judgment interest shall accrue upon the judgment sum, inclusive of pre-judgment interest once quantified, at the statutory judgment rate being 6.25%, from the date of this judgment until payment.

Costs

[65]. Having regard to the outcome of the assessment as a whole, the Court is satisfied that the Claimant is entitled to her costs in principle, she having succeeded in recovering damages. However, she has recovered substantially less than the amount claimed and the Defendant has succeeded on several significant issues, including the reduction of general damages well below the figures advanced by the Claimant, the rejection of a number of pleaded items of special damage, and the discounting of the lost-earnings claim. The Claimant filed a Schedule of Costs claiming \$38,995.00, comprising \$35,450.00 in professional charges, \$290.00 in disbursements, and value added tax (vat) at 10%. That schedule includes a number of items including earlier procedural work concerning renewal of the writ, default-judgment steps, and appeal-related work.

[66]. In making any final order as to costs, the Court will take into account: (a) the Claimant's success and recoverable damages; (b) the Defendant's success in reducing the claim substantially; (c) the extent to which individual heads of special damage were not proved; (d) any admissible offers of settlement properly brought to the Court's attention; and (e) the overriding objective of dealing with cases justly and at proportionate cost under the Civil Procedure Rules, 2022.

[67]. Having regard to the foregoing considerations, I allow assessment-related professional charges of \$26,200.00 and disbursements of \$270.00. Applying a 60% reduction to the professional charges, representing the Defendant's success in reducing the claim, the costs awarded are as follows:

- i. Professional charges: \$15,720.00
- ii. VAT at 10%: \$1,572.00
- iii. Disbursements: \$270.00
- iv. **Total costs awarded: \$17,562.00**

[68]. IT IS ORDERED THAT:

1. The Defendant do pay to the Claimant damages in the principal sum of **\$39,515.86**.
2. The Claimant is awarded pre-judgment interest pursuant to the Civil Procedure (Award of Interest) Act (Ch. 80), calculated at 2% (a) on special damages, from the date of loss to the date of judgment; and (b) on general damages, from the date of service of the Amended Writ to the date of judgment.
3. The Defendant do pay post-judgment interest at the statutory judgment rate being 6.25% from the date of judgment until payment.
4. The Defendant shall pay the Claimant fixed costs in the sum of **\$17,562.00**, inclusive of VAT and allowed disbursements.

Dated this 5th day of August A.D., 2026.

[Original signed & sealed]

Renaldo Toote
Registrar