

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2018/CLE/gen/00615

B E T W E E N

THORNE CLARKE

Claimant

AND

THE COMMISSIONER OF POLICE OF THE COMMONWEALTH OF THE BAHAMAS

First Defendant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Second Defendant

Before: Assistant Registrar Jonathan Deal

Appearances: Christina Galanos and Kristina Saunders for the Claimant
Keith Cargill for the Defendants

Hearing date: 27 May 2025; written closing submissions 27 November 2025 (Claimant) and 16 January 2026 (Defendants)

JUDGMENT

ASSISTANT REGISTRAR DEAL

[1.] This is the Court's assessment of damages pursuant to a Judgment in Default of Defence filed by the Claimant on 24 September 2019. The action arises out of a police-involved shooting that took place on 13 February 2016.

[2.] The Claimant seeks the following reliefs as set out in the prayer of his Amended Statement of Claim filed on 15 May 2025:

- "1. Special Damages in the sum of \$202,783.41 and continuing;
2. General damages;
3. Exemplary damages;
4. Aggravated damages;
5. Punitive damages;
6. Interest pursuant to the Civil Procedure (Award of Interest) Act, 1992;
7. Further or other relief; and
8. Costs."

[3.] At the assessment hearing, the Court heard evidence from the Claimant, his family members, Donald Clarke, Karen Clarke, and Kyle Clarke, Consultant Neurologist Dr. Clyde Munnings, and Consultant Psychiatrist and Forensic Psychiatrist Dr. John Dillett, each of whom made a witness statement which they adopted as their evidence-in-chief. The witness testimony was supplemented by a Bundle of Documents filed on behalf of the Claimant on 26 May 2025, but it was not agreed before the assessment hearing and was not admitted into evidence. The Defendants chose to lead no evidence.

[4.] There has been no application by the Claimant to reopen the assessment hearing to admit evidence about matters occurring after that hearing, including the matters that led the Claimant to apply for an interim payment from the Defendants. The Court is therefore constrained to confine its attention to the evidence that was before it at the assessment hearing. The exception is that the Court must take into account that an interim payment of \$80,000 was ordered by the Honourable Madam Justice Darville Gomez on 19 August 2026 and was subsequently paid by the Defendants on or about 8 September 2026.

[5.] It appears that, by oversight, the Judgment in Default of Defence filed on 24 September 2019 provided only for the assessment of general and special damages. The assessment nevertheless proceeded on the basis that all pleaded heads of damage were before the Court. When closing submissions were received, it was common ground that the claims for exemplary and punitive damages were duplicative. Having invited representations on the point, it is ordered, pursuant to **Parts 26.2 and 42.10 of the Supreme Court Civil Procedure Rules, 2022**, that the first operative paragraph of the Judgment in Default of Defence be amended to read:

"IT IS THIS DAY ADJUDGED that the First and Second Defendants do pay to the Plaintiff special and general and aggravated and exemplary damages to be assessed and interest thereon pursuant to the Civil Procedure (Award of Interest) Act, 1992"

Factual background

[6.] The factual background that follows sets out the Court's findings of fact based on the evidence before it at the assessment hearing.

[7.] The Claimant was born on 9 January 1994 to Donald and Karen Clarke. He graduated from Saint Augustine's College in 2011 and received a four-year scholarship to attend the University of The Bahamas. He pursued an Associate's Degree in Business Education at the University of The Bahamas but discontinued his tertiary education in or around January 2013 to join the workforce. Following brief stints of employment at Blue Caviar as a kitchen steward and at Echo Nautilus as a bottlemaker, he found employment at the Nassau Tile Factory as a part-time warehouse assistant in January 2016. As of 13 February 2016, he was a probationary employee. He was fully independent and physically and mentally healthy, with no known chronic medical conditions. He was able to drive, frequently played basketball recreationally, regularly walked for exercise, played drums at his church, had a moderately active social life, and was a sexually active young adult.

[8.] On or about 13 February 2016, at approximately 11:00 pm, the Claimant was driving his mother's blue six-seater van in the area of Wilson Tract when he was stopped by an unidentified police officer during a traffic stop and ordered to exit his vehicle. The Claimant asked the police officer for the reason for the stop, received no answer, and, in disobedience to the officer's instruction, began to drive away. The officer proceeded to discharge his firearm in the direction of the Claimant's vehicle, firing multiple shots at the vehicle. One of the bullets breached the rear windshield of the vehicle and then struck the Claimant.

[9.] The Claimant sustained a penetrating gunshot wound to his upper back or shoulder while driving. The bullet that hit the Claimant transected his spinal cord, as a result of which he lost control of his legs and feet. He was unable to brake and drove into a wall. He was unable to extract himself from the vehicle after the collision. The police dragged him from the vehicle, placed him face down onto the road, very tightly handcuffed him behind his back, and ran a background check once they obtained his name. That background check suggested that he was not the person the police were looking for that evening.

[10.] The Claimant was conveyed by ambulance to the Accident and Emergency Department at the Princess Margaret Hospital for treatment. In the ambulance, he was given a brace for his neck and was placed on a ventilator because one of his lungs had been punctured. He was seen by emergency medical personnel at the A&E and immediately underwent surgery for a tube to be placed into his chest to drain blood from his lungs. No other surgery was performed. In particular, the fragments of the bullet that hit him were not removed. After surgery, the Claimant was placed on a saline drip. He remained under care and supervision at the Princess Margaret Hospital until he was discharged approximately three weeks later.

[11.] Initially, during his stay at the Princess Margaret Hospital, the Claimant was placed under constant police surveillance, was not freely allowed visitors, and was handcuffed to his hospital bed because he was placed under arrest though he had not been formally told that he was under arrest. Those conditions persisted until about 16 February 2016, when the police presence suddenly dissipated. A police officer later visited the Claimant, took a statement from him, and promised

that he would look into the shooting and contact him. Up to the assessment hearing, however, the Claimant had never been contacted by the police about his case.

[12.] While recovering at the Princess Margaret Hospital, the Claimant was informed by Dr. Magnus Ekedede that his spinal cord had been completely severed at the T7-T8 level and that, as a result, there was little to no chance of him recovering to the point of mobility, so he would likely be confined to a wheelchair. This caused him to become upset, sad, depressed and hurt. The Claimant also experienced moderate pain in his lower back and at the site where the chest tube was surgically placed and removed. That pain did not subside until sometime after he was discharged and it became significantly worse before it subsided. Additionally, the Claimant developed a severe bedsore while in hospital that was so deep that it exposed his hipbone and required him to undergo a debridement before discharge.

[13.] The Claimant was discharged from the Princess Margaret Hospital in a donated wheelchair with a prescription for several medications and a catheter connected to a urine bag. Nurses from a public clinic assisted with weekly catheter changes and with cleaning and dressing the Claimant's bedsores. However, his mother became his primary caregiver. Before the incident, she was self-employed and owned and operated a daycare, but she closed it after the incident because the Claimant required around-the-clock care and the family could not afford to hire a third-party provider. She moved into her ex-husband's home, where the Claimant lives, to care for him, and acted as the Claimant's full-time caregiver from March 2016 until March 2021, when he could stay home alone. She continues to be his primary caregiver.

[14.] Following several serious infections caused by using catheters, the Claimant switched to using diapers permanently in or around October 2016, which he found difficult to adjust to. He continued to develop bedsores after being released from the hospital, with one major bedsore developing in or around 2017 and another developing in 2019. One of the Claimant's bedsores was as big as a fist. Those setbacks aside, by the end of 2019, the Claimant began to regain some of his independence with the benefit of occupational therapy. Since 2019, he has been able to get into bed from his wheelchair and out of bed into his wheelchair using his upper body strength, to get into and out of vehicles using his upper body strength, to wash the dishes, and to get into and out of his father's house with the advantage of modifications made to the home. Since March 2021, he has also been able to change his own diapers, but he remains unable to bathe himself as he does not have an accessible bathroom.

[15.] Drawing from Dr. Munnings' medical report dated 10 March 2022, the Claimant sustained a severe gunshot wound to the left chest resulting in a lung contusion and a right hemopneumothorax as well as a thoracic fracture and transection of the spinal cord at the T5-T6 level, with consequent paraplegia. The Claimant developed flaccid and spastic paraplegia with involuntary muscular contractions and neurogenic bladder, sexual dysfunction, no control of his bowel, a sacral decubitus ulcer and a retained foreign body related to the gunshot injury. On examination, he had no voluntary movement in any muscles of the lower extremities (which have atrophied), absent sensation below T7-T8, no bowel or bladder control and shortness of breath. These conditions are permanent and the Claimant is 100% disabled, having reached maximum improvement. The prognosis is that he will not regain strength in his legs, sensation below T7-T8, the ability to walk, normal sexual function or functional control of his bladder or bowel, and

that he will remain permanently dependent on a wheelchair for mobility. In summary, the Claimant's injuries are as he pleaded them in his Amended Statement of Claim.

[16.] Naturally, the Claimant's condition has seriously interfered with and will continue to seriously interfere with his daily life. He has no urge to use the bathroom and no control over his bowels and therefore he involuntarily soils himself. He must check his Depends underwear every two or three hours to see whether his diapers need to be changed. He cannot sleep through the night. As is common with paraplegics, he is prone to bedsores. He must wake up every two hours to change positions to prevent bedsores and to change his diapers once or twice per night. He is unable to completely avoid bedsores because he sometimes oversleeps. His bedsores have been hard to heal. He has been nursing the same major, painful bedsore since 2019. He must clean and dress his bedsores, which can sometimes be odorous, daily. That causes him anxiety about work. He is unable to drive and is reliant on others for transportation. He can no longer play basketball, a sport which he loved, and he is now socially isolated. He rarely attends social events, apart from funerals and weddings, though he still attends church, because he does not wish to be a burden on others and he is self-conscious about his condition. He has greatly reduced prospects of marriage and procreation.

[17.] In the blunt words of the Claimant's father, the shooting converted the Claimant from a relatively normal, athletic and ambitious young man into a "depressed paraplegic". The Claimant feels hopeless most days and has resorted to video games involving able-bodied characters as an escape from reality. He has struggled to process his condition and finds it difficult to summon ambition or drive. Until recently, he was unable to seek treatment for the emotional pain he has experienced. In 2025, he was able to pay for the services of Dr. John Dillett, who diagnosed him with Post-Traumatic Stress Disorder and secondary Major Depressive Disorder. It is expected that, in the immediate, intermediate and long-term future, the Claimant will have to deal with moderate to severe emotional pain as he tries to resolve, in Dr. Dillett's words, "the conflictive feelings associated with physical and emotional trauma". These feelings may adversely affect his ability to maintain close relationships, function academically and function professionally. The Post-Traumatic Stress Disorder may resolve within one to five years or may be long-term. The Major Depressive Disorder is expected to resolve with the Post-Traumatic Stress Disorder.

[18.] As a result of his disability, the Claimant could not continue his pre-injury part-time employment as a warehouse assistant with the Nassau Tile Factory, where he earned \$250 weekly as of 13 February 2016. He was unemployed for approximately seven and a half years after the shooting. He was unable to obtain substantive work again until he was offered a one-month role as a summer employee at the National Commission for Persons with Disabilities (NCPD) during the summer of 2023 earning \$180 per week. He subsequently secured full-time, non-permanent employment as an inspector with the NCPD in June 2024 at a salary of \$1,500 per month. The position became available after another candidate failed to assume a three-year contract and the NCPD were prepared to have the Claimant perform the candidate's duties. Although he initially worked standard hours, by the assessment hearing, the Claimant was leaving work early each day to tend to his bedsore, which made him anxious about losing his job.

[19.] The Claimant has received invalidity benefits from the National Insurance Board (NIB) in the amount of approximately \$296 per month since 2018. He did not receive any invalidity benefits from the NIB for approximately four to five months in 2020 during the COVID-19 pandemic.

[20.] The Claimant and his family have incurred significant out-of-pocket expenditure in treating and accommodating the Claimant's gunshot injury and paraplegia. Although the Claimant was unable to locate all of the receipts for those expenses, he produced receipts totaling \$23,783.41. The receipted expenditure included necessary medication and medical supplies, physiotherapy, medical visits, a hospital bedframe, a specialized mattress, and a thoracic lumbar sacral orthosis ("TLSO"). Additionally, he estimated that, since switching to diapers, he has spent approximately \$70 per month on diapers and \$140 per month on underpads, both of which he will continue to require because he has no control of his bladder. He has also periodically had to purchase gauze, tape, sudocream and prescription gel for the cleaning and dressing of his bedsores, items which he expects to continue to require. He estimates that those items cost him approximately \$150 per month. He has also been professionally advised by Dr. Dillett to pursue one session per week of psychotherapy or trauma counselling for at least twelve to twenty-four months at a cost of \$242 for a first visit and \$176 for follow-up visits.

Issue

[21.] The issue for the Court to determine is the quantum of damages to be awarded to the Claimant on the evidence before it.

[22.] In the closing submissions lodged on his behalf, the Claimant sought an award of damages totaling \$2,064,219.41 before pre-judgment interest, broken down as follows:

Item	Amount
PSLA	\$955,000
Loss of Earning Capacity	\$360,000
Future Medical Expenses	\$144,546
Pre-trial Out-of-pocket Expenditure	\$23,783.41
Pre-trial Out-of-pocket Expenditure (Diapers and Underpads)	\$22,890
Pre-trial Loss of Earnings	\$98,000
Pre-trial Nursing Care	\$60,000
Aggravated Damages	\$150,000
Exemplary Damages	\$250,000

[23.] In the closing submissions lodged on their behalf, the Defendants advocated for an award of damages totaling \$539,350.03 before pre-judgment interest, broken down as follows:

Item	Amount
PSLA	\$348,240
Loss of Earning Capacity	Nil
Future Medical Expenses	Nil
Pre-trial Out-of-pocket Expenditure	\$23,783.41

Pre-trial Out-of-pocket Expenditure (Diapers and Underpads)	\$182.12
Pre-trial Loss of Earnings	\$97,044.50
Pre-trial Nursing Care	\$60,000
Aggravated Damages	\$5,000
Exemplary Damages	\$5,000

[24.] The assessment of damages is undertaken under the headings and in the order outlined in the tables above. The issues of interest and costs are discussed in the conclusion of this judgment.

Discussion and analysis

[25.] Damages in personal injury cases are mainly compensatory. The object of a compensatory award of damages is to provide full compensation to the injured party by placing that party, as nearly as can be done, in the same position as if the wrong had not occurred: **Livingstone v Rawyards Coal Co** (1880) 5 App Cas 25. This applies to both pecuniary and non-pecuniary loss. An award of damages is also intended to compensate once and for all: **Wells v Wells** [1998] 3 All ER 481. The assessment of damages is therefore not an exact science: **Hunt v Severs** [1994] 2 All ER 385.

[26.] Damages can be divided into general damages and special damages: **British Transport Commission v Gourley** [1956] AC 185. General damages, which include past and future non-financial losses and loss of future earning capacity, are generally not required to be specifically pleaded and their quantification is a matter of opinion or judgment. Special damages, which include past loss of earnings and out-of-pocket expenditure incurred up to the date of trial, must, as a general rule, be specifically pleaded and proved, because they are already quantified or are readily quantifiable.

General damages

Pain, Suffering and Loss of Amenities (PSLA)

[27.] Damages for PSLA are not capable of arithmetical calculation. Instead, all that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases, as represents the Court's best estimate of the claimant's damages: **Wells v Wells** (*supra*). Damages for PSLA must be reasonable and must be fair to both the party paying the damages and to the party receiving them: **Scott v The Attorney General** [2017] 3 LRC 704. There is a need for moderation in their assessment: **West v Shepherd** [1964] AC 326. Such damages are not intended to be a punishment nor a windfall but "reasonable solace for the misfortune": **Attorney General of St. Helena v AB** [2020] UKPC 1.

[28.] The assessment of PSLA is a fact specific exercise. The usual practice is to grant a global sum for PSLA considered against the backdrop of the nature and extent of the injuries sustained by the claimant, the nature and gravity of the resulting physical disability, and the extent of claimant's past and prospective pain and suffering and loss of the amenities of life: **Cornilliac v St Louis** (1965) 7 WIR 491. In making the assessment, regard may be had to comparable awards in this jurisdiction and others with similar socio-economic conditions, as well as to English awards

and practice including the **Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases** (JC Guidelines): **Ornal Gilbert v Nassau Flight Services** [2022] 1 BHS J. No. 56.

[29.] Where, as here, there are multiple injuries, the Court’s objective is to award reasonable compensation for the totality of the injury, taking an overall view. In multiple-injury cases, symptoms may overlap, creating a risk of double counting, or the combined effect of the injuries may be greater than the sum of their parts. The Court may therefore use the figures it considers reasonable for each injury as a guide, but it must stand back, consider the overall award, and decide whether an upward or downward adjustment is required. Only in a minority of cases will no adjustment be necessary: **Shorn Scott (also known as Shawn Scott) v The Attorney General** [2015] 1 BHS J. No. 28 citing **Sadler v Filipiak** [2011] EWCA Civ 1728.

[30.] Referring to the 17th edition of the JC Guidelines, Counsel for the Claimant offered suggested awards for the Claimant’s injuries as summarised in the table below and submitted that no upward or downward adjustment in arriving at a total award for PSLA is required in the unique circumstances of this case:

Injury	Category	Bracket	Suggested award
Paraplegia	Chapter 2, Injuries Involving Paralysis; (B) Paraplegia	£267,340 to £346,890	\$500,000 (above bracket)
Lung contusion and right hemopneumothorax	Chapter 6, Injuries to Internal Organs; (A) Chest Injuries; (b)	£80,240 to £122,850	\$150,000
Loss of sexual function	Chapter 6, Injuries to Internal Organs; E. Reproductive System: Male; (b) Total impotence and loss of sexual function	£140,220 to £181,020	\$220,000
Major Depressive Disorder and Post-Traumatic Stress Disorder	Chapter 3, Brain and Head Injury (A) Psychiatric Damage Generally. (b) Moderately Severe	£23,270 to £66,920	\$85,000

[31.] Counsel for the Claimant compared the Claimant’s position to the position of the claimants in **Shorn Scott (also known as Shawn Scott) v The Attorney General** (*supra*) and **Russell v Rolle** 2001/CLE/gen/911, a decision delivered on 19 July 2006, which are discussed below. Counsel submitted that:

- (i) the claimant in **Scott**’s injuries are “not nearly as severe” as the Claimant’s because he (the claimant in **Scott**): (a) did not suffer any loss of sexual sensation; (b) was not depressed; (c) was found not to have the worst kind of paraplegia in that he was

not in pain, not bedridden, and not plagued with multiple bedsores and urinary tract infections; and (d) sustained a haematoma and not the more severe injuries of a lung contusion and right hemopneumothorax.

- (ii) although the claimant in **Russell** “appears to have sustained injuries which could be considered more extensive” and she “apparently had to undergo more surgical procedures”, nevertheless, in the round, she fared better than the Claimant because she was already married and had procreated when she became paraplegic and she was still able to have sexual intercourse with her husband and to procreate in the future after she became paraplegic.

[32.] Adopting a different approach, Counsel for the Defendants placed emphasis on the Claimant’s paraplegia and highlighted the similarity between the Claimant’s circumstances and the claimant in **Shorn Scott**. Counsel highlighted as points of distinction the fact that in the present case the Claimant experienced (and currently experiences) pain, bedsores, depression, a 20% life expectancy alteration (about which more is said at paragraph [48] below), and loss of sensation in bladder and bowels. Counsel noted that the JC Guidelines suggested an award for paraplegia ranging from £267,340 to £346,890 with an additional consideration added since the 11th edition, namely, the impact of paraplegia on sexual function. Counsel submitted that a reasonable award for PSLA would be £300,000, which, converted to Bahamian dollars at the time of Counsel’s submissions, was \$348,240.

[33.] In the Court’s respectful view, the sum of \$955,000 sought by the Claimant for PSLA is not supported by the facts or authority. The recommended award is out of scale with the comparable awards offered for consideration and does not adequately avoid double counting for symptoms and/or complications of paraplegia. The presence or absence of depression and the impact of paraplegia on sexual function are considerations that are expressly required to be considered under the JC Guidelines when determining an award for paraplegia and therefore any award made by treating loss of sexual function and depression as distinct injuries would require significant discounting. The approach adopted by the Defendants to the assessment of PSLA has much to commend it, but the award suggested is also not unproblematic as it fails to adequately account for the distinguishing features between this case and **Scott**.

[34.] In **Russell**, the earlier of the two comparable awards offered for consideration, the claimant, a married mother of a young child, was a backseat passenger involved in a road traffic accident at the age of twenty-three. She sustained a closed head injury with loss of consciousness, lacerations to the face, extensive lacerations to her scalp, scarring, near loss of an ear lobe, fractures of ribs 7-10, right pneumothorax, closed comminuted fractures of the mid-shaft of her left radius and ulna, and comminuted fractures of the T7-T9 thoracic vertebrae with severe spinal cord injury and paraplegia. There was no damage to her reproductive organs but she was at risk of damage to her “muscles-skeletal system” if she were to have further children. Due to her paraplegia, she was wheelchair-bound, she lost control of her bladder and bowel function, she suffered decreased sensation during intercourse, she developed depressive feelings and was unable to care for herself or her daughter without assistance. She underwent at least six medical procedures including a laminectomy and removal of bony fragments from the spinal canal, the closure and debridement of her scalp wound and an open reduction of her fractured radius and ulna with plate and screws. She required future spine surgery and was in constant back pain. She was fitted with a colostomy

bag and a urethral catheter which had to be changed daily with assistance. There was no medical evidence that she suffered a decrease in life expectancy. The claimant was awarded the sum of £140,000 or \$256,676 for pain, suffering and loss of amenity.

[35.] In **Scott**, the second comparable award offered for consideration, the claimant, who was twenty-six years old at the time of a police-involved assault, suffered paraplegia, hematoma, laceration to forehead, scarring, abrasions to elbow, injury to the lower back, head injury causing consistent headaches, bowel and bladder incontinence, dizziness and pain in his left ear. He was awarded \$257,000 for PSLA at first instance before deductions. The claimant appealed to the Court of Appeal on various grounds including that the PSLA award was inordinately low. The Court of Appeal took into account that the claimant was not experiencing pain as a result of the paraplegia, was able to mount and dismount his wheelchair, was able to drive and work as a mechanic, had been able to father three children since his injuries, was not depressed, was not bedridden, was not plagued with multiple bedsores and urinary tract infections, and his injury was not expected to alter his life expectancy, and increased the award for PSLA to \$314,500. On appeal to the Judicial Committee of the Privy Council, the award was further increased on 16 May 2017 by \$1,940 to account for the claimant's complaints of dizziness and ear pain, bringing the total award for PSLA in the case to the sum of \$316,440.

[36.] The JC Guidelines have been updated since the parties' submissions were lodged with increased brackets of suggested award. However, it would be inappropriate for the Court to have regard to the updated brackets of the 18th edition without first hearing from the parties as to the suitability or otherwise of those increased figures, at current exchange rates, in the Bahamian context. The 17th edition, to which the Court was unanimously referred, provided with respect to paraplegia:

“Paraplegia

£267,340 to £346,890

The level of the award within the bracket will be affected by the following considerations:

- (i) the presence and extent of pain;
- (ii) the degree of independence;
- (iii) depression;
- (iv) age and life expectancy;
- (v) impact on sexual function

The presence of increasing paralysis, or the degree of risk that this will occur (e.g., from syringomyelia), might take the case above this bracket, as may the presence of other significant injuries. The former might be the subject of a provisional damages order.”

[37.] It is no easy task to settle upon a sum that fairly compensates the Claimant for catastrophic injuries that have permanently altered his life. The Court finds it convenient to use the JC Guidelines bracket for paraplegia as a starting point and then adjust for the particular features of the case, as was done in **Noble v Owens** [2008] EWHC 359 (QB). Having carefully considered the evidence and the parties' submissions, the Court concludes that the sum of \$425,000 is a reasonable award for the totality of the Claimant's injuries. The Claimant was injured in the prime of his life, was denied a normal early adulthood, and has been, and will continue to be, deprived of many ordinary pleasures of life because he is no longer able-bodied, he is incontinent, he has permanent sexual dysfunction, he suffers from Post-Traumatic Stress Disorder and Major

Depressive Disorder and he has had to manage and will have to continue to manage bedsores. The Court accepts that a higher award of PSLA is warranted than in **Scott** or **Russell** for the reasons advanced by Counsel for the Claimant. The Court is not persuaded that the Claimant's chest and lung injuries are so severe as to warrant an award in JC Guideline bracket (b).

[38.] The decision in **TK (An Infant by his Next Friends TK and LK) v Dr. Gregory Carey** [2025] 2 BHS J. No. 80, decided on 17 July 2025 and recently upheld on appeal in SCCivApp No. 142 of 2025, provides a useful datum for comparison against the award for PSLA in this case. In that case, the claimant suffered severe brain damage resulting in widespread neurological and physical sequelae due to complications in his delivery. Those deficits included epileptic seizures, Myoclonic Encephalopathy, LGS, microcephaly, mental retardation, quadriplegia and an inability to communicate. The claimant, who could live well into his 60s, was left very severely disabled and dependent on others for the basic activities of daily living for the rest of his life. He was awarded \$500,000 for PSLA after \$50,000 was deducted because his condition deprived him of insight into his injuries. The present case involves catastrophic injuries, but not injuries of the same severity as those suffered by the claimant in **TK**.

Loss of earning capacity

[39.] Damages may be awarded to a claimant who is employed at the date of trial to compensate them for the reduction in their ability to compete in the open labour market because of their injuries. Such an award is commonly known as a **Smith v Manchester** award. As was explained in **Chan Wai Tong v Li Ping Sum** [1985] AC 446, a claim for loss of future earning capacity usually arises where the claimant is in employment at trial and the purpose of the claim is to cover the risk that, at some future date during the claimant's working life, he will lose his employment and will then suffer financial loss because of his disadvantage in the labour market either because he will not find work or he will find less well-remunerated work. The award is based on an evaluation of the present value of that future risk.

[40.] Relying on **Gilbert** (*supra*), Counsel for the Claimant submitted that a **Smith v Manchester** award of \$360,000 should be made to reflect the fact that the Claimant is 100% disabled and he now faces insecure employment. Counsel submitted that, given the Claimant is unable to work a full day because he has to leave work early to tend to his bed sore, there is a real and substantial risk that he will lose his job with the NCPD in the near future. Counsel estimated that the risk the Claimant will lose his job may materialize within three years and submitted that, if he does in fact lose his job, his chances of getting an equally paid job, or any paid job at all, are slim, as he only has a high school education and has no use of his legs. For those reasons, Counsel recommended an award of \$360,000, which is equivalent to twenty years' gross wages at the Claimant's salary level at the time of the assessment hearing.

[41.] In **Gilbert**, the claimant, a ground handler, fell through the platform of an Airstair at his employment. He suffered a torn right rotator cuff and experienced pain which did not completely resolve with surgery and physiotherapy. He was 42 years old at the time of trial and had 23 years remaining in his working life. He remained employed earning a salary of \$644 per week, however the Court accepted that, due to the residual effect of the injury on his shoulder, he was likely to be "somewhat" handicapped on the labour market. The Court observed that, should he lose his work, his line of work was not extremely niche but also not common, which would be relevant to his

ability to find alternative work. Applying a discount since the claimant would be receiving a lump sum, the Court made a **Smith v Manchester** award in the sum of \$40,000.

[42.] In **Moeliker v A. Reyrolle & Co. Ltd** [1977] 1 WLR 132, a decision of the English Court of Appeal cited in **Gilbert**, Browne LJ stated in a passage that has come to be considered authoritative:

“Where a plaintiff is in work at the date of the trial, the first question on this head of damage is: what is the risk that he will at some time before the end of his working life lose that job and be thrown on the labour market? I think the question is whether this is a ‘substantial’ risk or is it a ‘speculative’ or ‘fanciful’ risk: [...]. In deciding this question all sorts of factors will have to be taken into account, varying almost infinitely with the facts of particular cases. For example, the nature and prospects of the employers’ business; the plaintiff’s age and qualifications; his length of service; his remaining length of working life; the nature of his disabilities; and any undertaking or statement of intention by his employers as to his future employment. If the court comes to the conclusion that there is no ‘substantial’ or ‘real’ risk of the plaintiff losing his present job during the rest of his working life, no damages will be recoverable under this head.

But if the court decides that there is a risk which is ‘substantial’ or ‘real’ the court has somehow to assess this risk and quantify it in damages. ... Edmund Davies L.J. and Scarman L.J. said in **Smith v. Manchester Corporation**, 17 K.I.R. 1, 6, 8. that the multiplier/multiplicand approach was impossible or ‘inappropriate’ but I do not think that they meant that the court should have no regard to the amount of earnings which a plaintiff may lose in the future, nor to the period during which he may lose them. What I think they meant was that the multiplier/multiplicand method cannot provide a complete answer to this problem because of the many uncertainties involved. The court must start somewhere, and I think the starting point should be the amount which a plaintiff is earning at the time of the trial and an estimate of the length of the rest of his working life. This stage of the assessment will not have been reached unless the court has already decided that there is a ‘substantial’ or ‘real’ risk that a plaintiff will lose his present job at some time before the end of his working life, but it will now be necessary to go on and consider — (a) how great this risk is; and (b) when it may materialise — remembering that he may lose a job and be thrown on the labour market more than once (for example, if he takes a job and then finds he cannot manage it because of his disabilities). The next stage is to consider how far he would be handicapped by his disability if he was thrown on the labour market — that is, what would be his chances of getting a job, and an equally well paid job. Again, all sorts of variable factors will, or may, be relevant in particular cases — for example, a plaintiff’s age; his skills; the nature of his disability; whether he is only capable of one type of work, or whether he is, or could become, capable of others; whether he is tied to working in one particular area; the general employment situation in his trade or his area, or both. The court will have to make the usual discounts for the immediate receipt of a lump sum and for the general chances of life.”

[43.] The Court is unable to share the view of Counsel for the Defendants that no award for loss of earning capacity is appropriate in this case. The Court considers that there is a real or substantial as opposed to a fanciful risk that the Claimant may lose his present employment with the NCPD over the course of his working life and that he would, in that event, suffer disadvantage on the labour market.

[44.] The Claimant is currently thirty-two years old and had at least thirty years of working life remaining at the time of the assessment hearing. Notwithstanding that he is employed by a statutory body mandated to carry out the functions assigned to it under the **Persons with Disabilities (Equal Opportunities) Act**, his employment is nevertheless subject, although less so than for the average person in the private sector, to ordinary vicissitudes. He has less than three years' tenure and appears to be filling in a contract position. He has a serious bedsore which prevents him from working the full standard hours of work and is prone to bedsores. There is no evidence that the NCPD is dissatisfied with his service or has ever treated him less favourably due to his condition, but there is nonetheless a possibility that his employment might not be continued or might be terminated in the future. The state of the Claimant's health is also a factor that operates independently of employer-based considerations. It is tolerably clear without the benefit of expert evidence that complications from paraplegia, in particular bedsores, may render a person unable to continue to work. The Court has no expert evidence opining on the likelihood of that occurring in the Claimant's case. The expert evidence in this case does, however, establish that the Claimant's psychiatric illnesses may adversely affect his ability to function professionally. Again, the Court does not have an opinion on the likelihood of that occurring in the Claimant's case.

[45.] If he were to lose his current job with the NCPD in the future, the Claimant would plainly be at a disadvantage when competing for work with able-bodied applicants. The Claimant did not adduce expert evidence addressing his prospects of re-employment if he were to lose his current employment. However, expert evidence is not required for the Court to take notice of the notorious fact that discrimination against persons with disabilities, including in the area of employment, has been an area of concern and that many people with severe disabilities have found it difficult to find employment. According to the 2010 national census, unemployment rates among people with disabilities exceeded 70% (**2010 Census Disability Report**, page xvii). Practically, many jobs would be unavailable to the Claimant due to his physical limitations, but office work and remote work would be among the options he might pursue. In his particular circumstances, without further education and training, there is a real possibility that he would find it challenging to secure suitable alternative employment given his extensive post-injury unemployment, limited job experience, limited educational attainment, lack of professional qualifications, and the limitations created by his condition. Those limitations have the potential to threaten his employment throughout his entire working life.

[46.] The conventional range of **Smith v Manchester** awards is six months' to two years' net earnings: **Cadet's Car Rentals and another v. Pinder** [2016] 2 BHS J. No. 82. Nevertheless, there is no rigid rule that an award for loss of earning capacity must fall within certain parameters: **Foster v Tyne and Wear County Council** [1986] 1 All ER 567. Substantial awards can be identified: **Kelly v Evans** [1985] Lexis Citation 515; **Lincoln Nembhard v Wayne Sinclair** (2008) 7 JJC 2503; **Rogers v. Dr. Kelly** [2011] 3 BHS J. No. 99. The Court is not prepared to award the sum of \$360,000 sought by the Claimant due to his failure to provide sufficiently cogent evidence to support such an award. At the same time, the Claimant's disability, limited work history, history of bedsores, psychiatric diagnoses, insecurity of tenure, and restricted labour-market prospects justify an award significantly above the conventional range. Taking into account the Claimant's annual net earnings, his remaining working life, the identity of his current employer, the nature and extent of his disability, his qualifications, his past job experience, the nature of his current employment as an inspector, the uncertainty of the future risks, and the need

to discount for immediate receipt, the Court considers the sum of \$135,000 to be a reasonable award for loss of earning capacity and so awards that sum to the Claimant.

Future medical expenses

[47.] The Claimant's claim for future medical expenses comprised the sum of \$126,000 for diapers, underpads and miscellaneous items the Claimant will have to purchase in the future and \$18,546 for psychotherapy or trauma counselling.

[48.] In seeking the sum of \$126,000 for diapers, underpads and miscellaneous items, Counsel for the Claimant calculated the figure on the premise that the Claimant has an estimated life expectancy of seventy years old. Counsel suggested a multiplier of thirty-five based on that estimated life expectancy, and a multiplicand of \$3,600 per year based on the Claimant's evidence concerning the cost to him of meeting his current need for diapers and underpads and the fact that he will occasionally need additional items other than diapers and underpads to treat bedsores. It is convenient to first consider the proposed multiplier and then to consider the proposed multiplicand.

[49.] Determining the multiplier for lifetime loss requires first determining the Claimant's life expectancy. A claimant is presumed to have an average life expectancy: **Rowley v London and North Western Railway** (1873) LR 8 Ex 221. Any departure from that presumption is usually supported by expert evidence. No reliable evidence was led on the impact of the Claimant's injuries on his life expectancy. Although Counsel for the Defendants relied on Dr. Ian McDowell's 17 June 2016 opinion that life expectancy was reduced by 20%, that report was not admitted without formal proof, Dr. McDowell was not called, and the opinion was given shortly after the shooting, before the Claimant's final prognosis was known and when catheter use was still expected.

[50.] In the absence of reliable expert evidence specifically opining on the issue of life expectancy, the Court adopts the approach taken in **Russell** (*supra*), which involved broadly comparable paraplegia and possible complications. There, Assistant Registrar Cumberbatch (as she then was) assessed future damages on the basis of a life expectancy of sixty-five years, notwithstanding counsel's estimate of seventy years. There was catheterization and a colostomy in that case, which are not relevant considerations here, but, equally, there was no evidence of bedsores to the extent present in the Claimant's case. The Court will likewise assess damages for future medical expenses on the basis that the Claimant's life expectancy is sixty-five years.

[51.] In **Russell**, regard was had to the **Ogden Tables**. On the current state of the authorities, there are conflicting views about whether the **Ogden Tables** are suitable to be applied in The Bahamas given that they are based upon actuarial tables and calculations based on the population in the United Kingdom: compare **Delone Symonette v Charles Turnquest** [2020] 1 BHS J. No. 62 with **TK** (*supra*). As the Court was not invited to consider or apply the **Ogden Tables**, the Court declines to place any weight on them. With an estimated life expectancy of sixty-five years of age, the Claimant had thirty-four years of life remaining at the date of the assessment. The Court therefore regards a multiplier of thirty as appropriate.

[52.] Turning to the multiplicand, the Court accepts the proposed multiplicand of \$300 per month or \$3,600 per year. The Claimant's unchallenged evidence at the assessment hearing was that his current need for diapers and underpads costs him \$210 per month and he will from time to

time need additional items other than diapers and underpads to treat bedsores costing him \$150. The invoice dated 19 February 2025 from Bahamas Medical & Surgical Supplies in the sum of \$400.93 containing all of the items that the Claimant says he requires supports his assertions as to cost.

[53.] In view of the foregoing, the Court considers that the Claimant ought to recover from the Defendants the sum of \$108,000 ($\$300 \times 12 \times 30$) for the diapers, underpads and miscellaneous items he will have to purchase in the future.

[54.] With respect to the claim for \$18,546 for psychotherapy or trauma counselling, Dr. Dillett's unchallenged recommendation was that the Claimant receive one session of psychotherapy or trauma counselling per week for twelve to twenty-four months, at an estimated cost of \$242 for the first visit and \$176 for each subsequent session. Dr. Dillett also opined that medication might be required and, in response to a question from the Court at the assessment hearing, indicated that further therapy sessions could be necessary. He expressed no opinion, however, as to the likelihood of either. The Claimant seeks compensation consistent with the maximum initial treatment window recommended by Dr. Dillett and the cost of a first visit. In the context mentioned, the Court considers it reasonable to award the Claimant the sum of \$18,546 claimed.

[55.] The total sum of \$144,546 having been claimed on behalf of the Claimant for future medical expenses, the Court awards the Claimant the sum of \$126,546, comprising \$108,000 for diapers, underpads and miscellaneous bedsores-related items and \$18,546 for psychotherapy or trauma counselling.

Special Damages

Pre-trial Out-of-pocket Expenditure

[56.] The Claimant's claim for the sum of \$23,783.41 for the out-of-pocket expenditures that are pleaded under the heading "Particulars of Special Damages" in the Claimant's Amended Statement of Claim was not objected to by the Defendants. The Defendants conceded that the relevant expenditures were specifically pleaded, particularized and proven by various invoices and receipts. The Court concurs. Accordingly, the Claimant is awarded the sum of \$23,783.41 as claimed.

Pre-trial Out-of-pocket Expenditure (Diapers and Underpads)

[57.] The Claimant's pleaded claim for the sum of \$21,000 ($100 \text{ months} \times \210 per month) for diapers and underpads purchased since October 2016 was disputed by the Defendants. The Defendants invited the Court to disallow the claim, except to the extent of \$181.25, because there was no documentary evidence produced to support the alleged expenditure other than a single receipt in the amount of \$181.25. The Defendants relied on the decision of the Supreme Court in *Symonette* (*supra*), and on the principle that special damages must be specifically pleaded and proved.

[58.] On this aspect of the Claimant's claim, Counsel for the Claimant submitted that the medical evidence established that, from the moment of his injury, the Claimant lost function to his bowel and bladder and therefore he required diapers and underpads and other medical supplies. Counsel

for the Claimant invited the Court to award the Claimant \$70 per month for diapers and \$140 per month for underpads from the period commencing October 2016, when the Claimant ceased using catheters, to the date of the award. Counsel relied on the Claimant's unchallenged testimony that he spent approximately \$70 per month on diapers and \$140 per month on underpads to support the award.

[59.] The Defendants are correct in their submission that special damages must be specifically pleaded and proved. However, the medical evidence led by the Claimant clearly establishes that he has continuously required diapers and underpads due to his loss of control over his bladder and bowels. It has not been suggested that those essential supplies were ever supplied gratuitously. It would, therefore, be draconian to confine him to an award of \$181.25, as the Defendants invite the Court to do, simply because he has not provided receipts to support every purchase of what were, for him, routine and constantly required items.

[60.] Nevertheless, the Court concurs with the Defendants that the Claimant ought to have done more to substantiate his claimed historic average monthly expenditure on diapers and underpads. It is not possible for the Court to have confidence that the Claimant actually spent approximately \$70 per month and \$140 per month on underpads over a 10-year period on nothing more than his word. The invoice from Bahamas Medical & Surgical Supplies dated 19 February 2025 exhibited to the Claimant's witness statement provides some support for the Claimant's claim, but it is not enough as it is only a snapshot of a single month, from a single supplier, and the Claimant did not actually purchase \$210 worth of products on 19 February 2025.

[61.] On the state of the evidence, the Court is not satisfied that the Claimant has proven that he spent approximately \$70 per month purchasing diapers and \$140 per month purchasing underpads since October 2016. The Court is not satisfied that the sums claimed do not exceed his actual out-of-pocket expenditure, and the Claimant cannot benefit from his lack of proof. Nonetheless, as the Court accepts that diapers and underpads were necessary and were in fact purchased from October 2016 up to the date of trial, i.e., the assessment hearing, some award is appropriate. Taking a conservative approach, the Court awards the Claimant the nominal sum of \$100 per month from October 2016 to May 2025, totaling \$10,300.

Pre-trial Loss of Earnings

[62.] The Claimant's claim for the sum of \$98,000 in past loss of earnings reflecting \$1,000 per month between March 2016 and May 2024 was also disputed by the Defendants. The Defendants objected to the figure claimed on the basis that the amount sought by the Claimant did not factor in his NIB contributions which would have had to have been deducted from his gross earnings. In support of that proposition, Counsel for the Defendants cited **Dews v National Coal Board** [1987] 2 All ER 545, in which it was held that damages for loss of earnings are to be assessed at the net sum that would be available to the claimant after discharging their liability for tax rather than their gross earnings before tax. The Defendants submitted that the Claimant is entitled to \$97,044.50.

[63.] The principle applied in **Dews** is not in doubt. The Court concurs with the Defendants that the Claimant is entitled to loss of earnings calculated on the basis of his net earnings rather than his gross earnings. However, the Court does not accept the Defendants' calculation of the

Claimant's loss of earnings. The parties failed to account for the Claimant's brief period of summer employment with the NCPD in 2023 before he was hired on a full-time basis. The Court was not asked by either party to deduct the Claimant's receipt of invalidity benefits, and no developed submission was made as to whether those benefits should be treated as deductible or not. Accordingly, the Court awards the Claimant the sum of \$96,264.50 for pre-trial loss of earnings, which is the sum of \$97,044.50 calculated by the Defendants less the Claimant's summer earnings.

Pre-trial Nursing Care

[64.] It was not disputed by the Defendants that the Claimant should recover the sum of \$60,000 claimed for the nursing care and assistance that his mother provided him for five years. The figure of \$60,000 was calculated not by reference to the Claimant's mother's loss of profit or the commercial cost of care less a discount, but by applying the minimum wage of \$1,000 per month. It is settled law that the Court can make an award of damages in personal injury cases for caring services freely rendered by a relative or friend out of love and affection: **Severs** (*supra*). The Court sees no reason to disturb the common position of the parties. The Court therefore awards the Claimant the sum of \$60,000 for pre-trial nursing care.

Aggravated and exemplary damages

Aggravated damages

[65.] Aggravated damages are awarded to compensate a claimant where the defendant's conduct, motive or manner of committing the tort has caused anger, distress, indignity, humiliation, indignation or other injury to feelings. Aggravated damages are essentially compensatory notwithstanding they may have a punitive effect: **Rowlands v Chief Constable of Merseyside Police** [2007] 1 WLR 1065. The rationale for such damages is that the claimant would not receive sufficient compensation for the wrong if damages were restricted to a basic award: **Takitota v Attorney General** [2009] 4 LRC 807. When awarding aggravated damages, it is necessary to be alive to the risk of double counting.

[66.] Relying on **Douglas Ngumi v The Hon. Carl Bethel** [2021] 2 BHS J. No. 66, a false imprisonment case in which an award of aggravated damages in the sum of \$50,000 was made, Counsel for the Claimant submitted that the Claimant ought to be awarded at least three times the aggravated damages awarded in **Ngumi** because, in that case, the claimant's suffering "had an end date", whereas in this case, the entire trajectory of the Claimant's life has been drastically altered. Counsel for the Claimant expanded beyond the grounds pleaded for aggravated damages and highlighted the following factors which it was submitted the Court ought to consider in determining the quantum of aggravated damages:

- (i) the emotional distress and misery in relation to the entire ordeal that the Claimant has experienced and will continue to experience for the rest of his life;
- (ii) the indignity the Claimant experienced from being handcuffed to his hospital bed and constantly guarded by police officers for approximately three days after the

incident, all while he was processing the harsh reality that he would never be able to walk again;

- (iii) the indignity that the Claimant experienced when a police officer tended to his bedside, took a statement from him, promised to communicate further with him to apprise him of the Royal Bahamas Police Force's findings about his case and never did;
- (iv) the indignity and disgrace of being released from the hospital while paralyzed from the sternum down and contending with the harsh reality that the Defendants failed and/or refused to render any type of assistance to him whatsoever;
- (v) the development of bedsores, which are clearly a direct result of his being paralyzed from the sternum down. The indignity of having to leave work and other events at certain times just to ensure that his bedsores are properly tended to;
- (vi) the indignity of losing his sensation to use the restroom and only realizing that he has soiled himself when he, or others around him, smell the scent of his urine and/or feces.

[67.] Counsel for the Claimant also highlighted certain matters pertinent to the issue of aggravated damages when addressing the issue of exemplary damages. Those matters were the total lack of apology or explanation on the part of the Defendants and (what is not an unfair criticism in this case) a pattern of unresponsiveness and a general disregard for the proceedings and the Claimant's plight. Counsel in their summary of the procedural background highlighted multiple correspondences not acknowledged, several hearing dates missed, and the fact that the Defendants opposed the entry of judgment in default of defence but failed to attend the hearing seeking an extension of time to file a defence, and later made an overture that they would apply to set aside the default judgment more than five years after it was entered.

[68.] Counsel for the Defendants did not address or object to Counsel for the Claimant's expansion beyond the pleaded grounds for aggravated damages. Counsel referred to the judgment on assessment of damages of Assistant Registrar Toote (as he then was) in **Pedro Morley v The Commissioner of Police et al** 2020/CLE/gen/00717 where an award of aggravated damages in the sum of \$5,000 was made. In that case, an off-duty police officer threatened the claimant with a firearm and later in the same evening procured other officers to use a police vehicle to stop the claimant, which enabled him to confront the claimant and punch him twice about the mouth, thereby injuring him. Counsel submitted that a similar award of aggravated damages should be made in this case as was made in **Morley**.

[69.] It having in effect been conceded by the Defendants that an award of aggravated damages is appropriate, it remains only for the Court to quantify the award. Of the "factors" identified by Counsel for the Claimant, those enumerated in paragraphs [66(i)], [66(iv)], [66(v)] and [66(vi)] above relate closely to the injuries the Claimant sustained and his suffering and loss of amenity and therefore to take them into account when awarding aggravated damages would involve double counting. Taking into consideration the factors enumerated above in paragraphs [66(ii)], [66(iii)]

and [67] and the need for awards of aggravated damages to be reasonable and proportionate, the Court considers the sum of \$15,000 to be an appropriate award of aggravated damages in this case and so awards that sum.

Exemplary damages

[70.] Exemplary damages are an exceptional common law head of damages that are by their nature intended to be punitive. Exemplary damages are available only in limited categories of case, one such category being cases of oppressive, arbitrary or unconstitutional action by the servants of the government. The object of such damages is to punish the defendant for outrageous behaviour and to deter the defendant and others from repeating it: **Takitota v Attorney General** (*supra*). It has been emphasised that there is a need for moderation in their assessment, that the means of the defendant can be considered and that they should only be awarded if the compensatory damages awarded (including aggravated damages) are insufficient to punish the defendant, to mark the court's disapproval and to deter repetition of the conduct: **Rookes v Barnard** [1964] AC 1129.

[71.] Referring to the decision of the Court of Appeal in **Douglas Ngumi v The Hon. Carl Bethel** (*supra*), where an award of exemplary damages of \$100,000 was made in response to the claimant having been held in unsanitary, degrading and inhumane conditions, his property having been taken and not returned, and him having been beaten severely on different occasions by police officers, and **Merson v Cartwright** [2005] 67 WIR 17, a decision of the Judicial Committee of the Privy Council in which another award of exemplary damages of \$100,000 was upheld in a false imprisonment case, Counsel for the Claimant commended an award of exemplary damages of \$250,000 in this case on the basis that the breach of the Claimant's constitutional rights was more egregious than occurred in **Ngumi** or in **Merson**.

[72.] In addition to the matters mentioned in paragraph [67] above, Counsel for the Claimant invited the Court to consider the following factors when assessing the sum which the Claimant ought to receive by way of exemplary damages:

- (i) the police officer who stopped the Claimant repeatedly failed and/or refused to inform the Claimant why he was being stopped. It was submitted that this was a breach of the Claimant's constitutional right to liberty under **Article 19** of the **Constitution** and that the Claimant had a right to know why he was being stopped.
- (ii) the police officer's reckless decision to fire shots into the rear windshield of the Claimant's vehicle was done without any regard for the Claimant's safety. It was submitted that this was a breach of the Claimant's constitutional right to freedom of movement under **Article 25** of the **Constitution** and his constitutional right not to be subject to torture or inhuman or degrading treatment or punishment under **Article 17** of the **Constitution**.
- (iii) agents of the First Defendant pulled the Claimant out of his vehicle and handcuffed him after he was shot and had collided forcefully into a wall. It was submitted that this was a continuation of the breaches of his rights under **Articles 17, 19** and **25** of the **Constitution**.

- (iv) after an agent of the First Defendant shot the Claimant, they persisted in their breach of his constitutional rights by handcuffing him to his hospital bed, placing police officers in his hospital room to guard him constantly, and they failed to inform him of the reason why he was handcuffed to his hospital bed or why the police were watching him.

[73.] As with aggravated damages, Counsel for the Defendants did not dispute that exemplary damages ought to be awarded in this case. Counsel for the Defendants relied on the decision of Assistant Registrar Toote in **Morley** (*supra*) where \$5,000 was awarded for exemplary damages. Counsel for the Defendants submitted that a similar award of exemplary damages as was made in that case should be made in this case.

[74.] The Court is unable to accept either the award of \$250,000 contended for by the Claimant or the award of \$5,000 suggested by the Defendants as a fitting award of exemplary damages in this case. The instant case, though more egregious than **Morley**, is not, in the Court's view, as egregious as **Merson, Douglas Ngumi, or Matthew Sewell v The Attorney General of The Bahamas** [2024] 1 BHS J. No. 193, another false imprisonment case in which \$250,000 in exemplary damages was awarded, so as to warrant the proposed award of \$250,000. The sum of \$5,000 suggested by the Defendants would not be sufficient to achieve the objectives of punishment and deterrence in light of the reckless and excessive use of force by the police, the violations of the Claimant's rights and the oppressive and heavy-handed conduct after the shooting.

[75.] The Court considers the sum of \$50,000 to be a fair award of exemplary damages and so awards that sum. The sum awarded is sufficiently substantial to punish, to deter and to indicate the Court's disapproval of what occurred, whilst also balancing the considerations that awards of exemplary damages must be moderate and ultimately come as a windfall to the claimant.

Conclusion

[76.] For the reasons set out above, the Court makes the following award to the Claimant before deductions:

Item	Amount
PSLA	\$425,000
Loss of Earning Capacity	\$135,000
Future Medical Expenses	\$126,546
Pre-trial Out-of-pocket Expenditure	\$23,783.41
Pre-trial Out-of-pocket Expenditure (Diapers and Underpads)	\$10,300
Pre-trial Loss of Earnings	\$96,264.50
Pre-trial Nursing Care	\$60,000
Aggravated Damages	\$15,000
Exemplary Damages	\$50,000
<i>Total</i>	<i>\$941,893.91</i>

[77.] The Claimant has already received an interim payment from the Defendants in the sum of \$80,000. The total award must therefore be reduced by that amount. The net judgment sum payable to the Claimant is \$861,893.91, before any applicable pre-judgment interest calculated in accordance with paragraph [79].

[78.] Exercising its discretion to award pre-judgment interest under **Section 3(1)** of the **Civil Procedure (Award of Interest) Act**, the Court orders and awards pre-judgment interest from the date the Writ of Summons was filed, 29 May 2018, up to the date of this decision, as follows:

Item	Rate of interest
PSLA	3%
Loss of Earning Capacity	Nil (see Pelecanos v. Albury [2004] BHS J. No. 465)
Future Medical Expenses	Nil (see Felix Thompson and another v Fenton Strachan [2017] 2 BHS J. No. 171)
Special damages	3%
Aggravated Damages	3%
Exemplary Damages	3% (see Ramon Lop v Attorney General of the Commonwealth SCCiv App No. 118 of 2022, where pre-judgment interest was awarded on exemplary damages)

[79.] Statutory interest shall accrue on the judgment debt at the rate of 6.25% from the date of this decision until payment in full. **Section 2(1)** of the **Civil Procedure (Award of Interest) Act** provides that every judgment debt shall carry interest at such rate as shall be prescribed by rules of court made by the Rules Committee, currently the prime rate plus two per centum per annum per the **Civil Procedure (Rate of Interest) Rules**. Statutory interest runs only from the date on which there is an ascertained debt: **Gaming Board for The Bahamas v Kayla Ward** SCCiv App No. 120 of 2024.

[80.] Finally, the Defendants shall pay the Claimant's costs of the assessment, to be assessed by detailed assessment if not agreed.

Dated the 21st day of September, 2026


Jonathan Deal
Assistant Registrar