

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2009/CLE/gen/00693**

BETWEEN:

KENOL MERONARD

First Plaintiff

AND

KING COX

First Defendant

AND

UNITED SANITATION SERVICE

Second Defendant

Before: Assistant Registrar, Mr. Renaldo Toote

Appearances: Keith Bell for the Plaintiff
V. Mareno Hamilton for the Defendants

Hearing Date: 29th July, 2020

ASSESSMENT OF DAMAGES

Assessment of Damages – future medical expenses – Plaintiff seeking damages for personal injuries sustained in consequence of road traffic accident.

Toote, Assistant Registrar

1. This is an assessment of damages for personal injuries and loss sustained by the Plaintiff as a result of a road traffic accident which occurred on 10th March, 2006 at Harold Road, on the Island of New Providence.

2. By an Order of Evans, J. (as he then was) dated 18th September, 2012, the Court granted judgment to the Plaintiff due to the Defendants admission of liability at the trial hearing.
 3. Subsequently, the Defendants submitted submissions as to settlement which were handed over to the Court and Plaintiff. The Plaintiff accepted the settlement offer, save for the cost as to pain and suffering and loss of amenities (PSLA) and future medical expenses. Later, the Defendants attempted to resile from its settlement position and the Plaintiff made an application to this Court to consider whether or not the Defendants can withdraw its formal offer.
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4. On 9th July, 2020 I made a preliminary decision Ordering that the following special damages be deemed settled:

i. Medical Expenses:	
a. 2008 Surgery:	\$12,835.35
b. Physical Therapy:	\$ 1,300.00
c. Two MRI's:	\$ 1,195.00
d. Medical Report	\$ 70.00
ii. Loss of Profit	\$ 3,930.00
(Ken Enterprises)	
iii. Spine Surgery	\$ 1,000.00
Consultation	
Total:	<u>\$20,330.35</u>
 5. As previously stated, the assessment concerns the reasonable costs for future medical surgery and PSLA.

Plaintiff Injuries

6. It is established that the Plaintiff was driving west on Harold Road in a 2005 Kia Rio sedan, whilst the First Defendant was driving a 1999 Mack Truck in the opposite direction [east]. The truck which is owned by the Second Defendant, contained several unsecured fifty-five gallon drums on its cargo bed.
7. When the two vehicles drove pass each other, one of the unsecured drums fell from the truck's bed and landed in the Plaintiff's pathway; in his attempt to avoid a collision, the Plaintiff crashed into a large boulder rock and injured his lower lumbar back.
8. Since the accident, the Plaintiff indicated that he continued working as a Senior Field Officer at the Ministry of Environmental Health as well as operated a private heavy equipment business.

9. Two (2) months post the accident, the Plaintiff began experiencing slight pain. According to the medical evidence adduced, Dr. Valentine Grimes an Orthopedic Specialist, testified that he first examined the Plaintiff in 2008 and determined 40% of his vertebrae disc was damaged. Dr. Grimes diagnosed the Plaintiff with mechanical back pain where he performed two (2) fusion link surgeries on the Plaintiff, in 2008 and 2012 that placed braced screws in the Plaintiff's vertebrae for support.
10. Dr. Grimes further testified that the need for future surgery is inevitable because of the accelerated degeneration of the vertebrae discs which he opined is directly correlated to the 2006 accident. Dr. Grimes believes that if the Plaintiff's vertebrae continues to rapidly desiccate, he will undoubtedly experience disruption in his physical mobility. In his testimony, Dr. Grimes noted that the injuries were an acute situation, meaning if the injuries were sustained higher up the spine, it would have likely resulted in paralysis.
11. At the time of the accident, the Plaintiff was 38 years old who [as stated in paragraph 8 above] manually operated in the field.

Defendants Rebuttal

12. The Defendants argue that the Plaintiff's injuries were pre-existing as the Plaintiff was involved in seven (7) accidents prior to the 2006 incident and an additional two (2) accidents after 2006 where the Plaintiff allegedly drove over a cliff whilst driving a garbage truck and on another occasion injured himself after lifting a garbage truck tire. (It was later determined that the Plaintiff drove into a ditch and not off a cliff as alleged).
13. The Defendants rely on the uncontroverted evidence of Police Superintendent Maureno Hinds and the supervising officer of the Plaintiff Elvis McPhee, Chief Superintendent at his employ.
14. Further, the Defendants allege that if the Court determines that the injuries were not pre-existing, then the outstanding claims ought to be reduced by 50% as the Plaintiff would have contributed to the exacerbation of his injuries by not seeking medical attention in a reasonable time and returning to work immediately thereafter.

The Law

15. According to McGregor on Damages, (para 23, page 19), general damages are not specifically pleaded. These damages include pain and suffering and loss of amenities, continuing or permanent disability and future loss of earning power.
16. The Plaintiff claims \$52,402.00 for the cost of future spine surgery and \$32,083.48 for pain and suffering and loss of amenities.
17. According to **Lord Goddard in British Transport Commission v Gourley [1956] AC 185**, in an award for damages in personal injury matters, the Plaintiff is entitled to be placed in the position that he/she was, had the accident not occurred.
18. Therefore, the Court must look to the evidence by the attending physician, which stated the extent of the injuries of the Plaintiff. It must be noted that the Defendants did not rely on any medical expert to rebut Dr. Grimes.
19. Dr. Valentine Grimes described the Plaintiff's L4/5 disc as operating at 40% causing pressure on both the right and left nerve roots. Medically, Dr. Grimes purposed the L4-L5 disc as necessary for spinal motion segment which provides a variety of functions, including supporting the upper body and allowing trunk motion in multiple directions, together with the intervertebral disc, joints, nerves, and soft tissues.
20. Dr. Grimes premised the need for the future medical surgery on the fact that the 2012 MRI showed significant degeneration which was not present in 2008. The goal of the surgery is to allow more room for the nerve root, thus reducing pain (and potentially any leg weakness or neurological symptoms) and restoring the patient's ability to participate in everyday activities.
21. Notwithstanding, having observed the Plaintiff in the witness box, his pain threshold did not appear to be significantly high. In fact, he indicated that his pain threshold was a level 3 out of 10.
22. Based on the medical testimony, the Plaintiff was not rendered unfit to work, nor was he incapable of returning to work and performing manual labor. In fact, there was no evidence which indicated a drastic lifestyle change since the accident.
23. When considering the above, the Court should always be mindful that it must guard against issuing an award that is unfair.

24. However, there being no adverse medical opinion to dispute the evidence of Dr. Grimes, the Court has to accept the claim for future medical expenses. Having regard to the accidents post 2006, the Court is minded to discount the claim of \$52,402.00 at 15% to reflect contributory circumstances. Therefore, the future medical expenses is ordered at **\$44,541.70**.

25. In **Brown v Woodhall** [1995] P 1 Q R Q36 at Q39 **Sir John May** said that a global award should be granted for pain and suffering and loss of amenities; he then awarded the Plaintiff \$35,000.00 for general damages. This Court is minded to adopt the same approach and make a global PSLA award of **\$20,000.00** to reflect the surgeries performed and the future surgery required.

26. The total award for damages is now ordered as follows:

i.	Medical Expenses:	
a.	2008 Surgery:	\$12,835.35
b.	Physical Therapy:	\$ 1,300.00
c.	Two MRI's:	\$ 1,195.00
d.	Medical Report	\$ 70.00
ii.	Loss of Profit:	\$ 3,930.00
	(Ken Enterprises)	
iii.	Spine Surgery:	\$ 1,000.00
	Consultation	
iv.	Future Medical Expenses:	\$44,541.70
v.	<u>PSLA:</u>	<u>\$20,000.00</u>
	Total:	<u>\$84,872.05</u>

Interest on Special and General Damages

27. Under the Civil Procedure (Award of Interest) Act 1992, the Plaintiff is entitled to interest not only on special damages but also on general damages.

Section 2 states:

"Every judgment debt shall carry interest at such rate as shall be prescribed by rules of court made by the Rules Committee constituted by section 75 of the Supreme Court Act, and such interest may be levied under a writ of execution on such judgment.. (if the judgment has been obtained in the Supreme Court, from the time of entering it up ...)"

Section 3 states:

In any proceedings tried in any court, whether or not a court of record, for the recovery of any debt or damages, the court may if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

28. In the instant case, the Plaintiff has pleaded interest for special and general damages. Therefore, the Court awards interest at 3% from the date of the filing of the Writ until judgment and the statutory rate of 6.25% from the date of judgment until payment.

Cost

29. In an effort to expedite the completion of this matter, I ordered both Counsel to lay over to the Court its reasonable offer as to cost. Only the Plaintiff complied with these instructions. This matter originally commenced on 16 July, 2009 and then amended on 8 November, 2010. It has lingered through the courts system for 10 years. Pursuant to the Order of Evans, J. (as he then was) dated 18 September, 2012, the Plaintiff was entitled to its reasonable costs for the substantive trial hearing.

30. The Plaintiff's 1st Bill of Cost filed 18 December, 2012 requested the sum of \$39,829.00 as its reasonable costs for the trial hearing. Additionally, the 2nd Bill of Cost laid over to the Court in compliance with the assessment submitted cost at \$104,340.70.

31. When considering the reasonableness as to costs, "the Court ought to have regard to all the circumstances of the case in determining what costs are reasonable" (see **Charles, J. in West Bay Management Limited (t/a "Sandals Royal Bahamian) v The Registrar of Trade Unions and another** [2018] 1 BHS J. No. 193).

32. Having reviewed the Plaintiff's Bills of Cost, this Court hereby accepts the sum of \$39,829.00 as reasonable cost for the substantive trial together with \$30,000.00 for the hearing of the assessment and \$30,868.20 as proven disbursements as per the Affidavit of Disbursements of Indira Gaitor filed 13th November, 2020.

Dated this 9th day of December A.D. 2020


Renaldo Toote
Assistant Registrar
Supreme Court