

**IN THE SUPREME COURT OF BELIZE, A. D. 2015**

**CLAIM NO. 16 OF 2015**

**(OSCAR CORADO** **CLAIMANT**  
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**BETWEEN (AND**  
**(**  
**(CONSUELO BANNER** **DEFENDANT**

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***BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA***

**Mr. Nicholas Dujon, SC, for the Claimant**

**No representation for the Defendant**

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**D E C I S I O N**

**The Facts**

1. On November 21<sup>st</sup>, 2014 Oscar Corado was riding his motorcycle travelling west on the George Price Highway through Camalote Village, Cayo District, when upon reaching the vicinity of Dennis Store, Consuelo Banner negligently drove her vehicle across the path of his motorcycle and collided into him. Mr. Corado sustained injuries and has suffered loss and damage. He brought this Claim on the 15<sup>th</sup> January, 2015 which was duly served on Ms. Banner as proven by Affidavit of Service of Officer Jason Griffith of the Belmopan Police Department dated January 26<sup>th</sup>, 2015. Notice of the Claim was also served on February 11<sup>th</sup>, 2015 on Insurance Corporation of Belize as Insurer of the motor vehicle

that Ms. Banner was driving at the time of the accident (Affidavit of Raymond Harris, Process Server dated February 11<sup>th</sup>, 2015). Ms. Banner did not acknowledge service of the Claim and on February 12<sup>th</sup>, 2015 Mr. Corado obtained a default judgment against her. To date there has been no application by Ms. Banner to set aside this default judgment and Mr. Corado now seeks an assessment of damages arising from loss he suffered as a result of this traffic accident. The Court now proceeds to assess these damages.

2. Mr. Corado filed an affidavit on June 25<sup>th</sup>, 2015 setting out the details of his injuries and consequent loss suffered in this accident. He says that at the date of the accident he had been working as a mason for Mahung and Partners Ltd. and that he earned \$2000 per month as evidenced by a statement from the company (Exhibit OC 1). As a result of the accident Mr. Corado is now unable to work. He used to enjoy playing football and hunting but since this accident he is unable to do either. He states that he received the following injuries as set out and explained in the medical reports of Surgeon Mr. John Waight FRCS Ed:

- i) Closed displaced intra-articular fracture of the distal left radius with subluxation (partial dislocation) of the left wrist joint;

- ii) Closed diastasis (sideways opening) of the symphysis pubis (joint in the midline of the anterior part of the pelvis);

- iii) Subluxation of the left acromio-clavicular joint (the joint between the outer end of the clavicle (or collarbone) and the acromion.

3. Mr. Corado says that he felt a considerable degree of pain at the time of the accident and that he was hospitalized for five days. He also had two surgical procedures

performed on his left wrist. He says that he still experiences pain in the wrist, neck and right buttock. He has attached two medical reports from Surgeon Mr. John Waight FRCS Ed. detailing the nature and extent of his injuries (Exhibits OC 2 and OC 3).

### **General Damages**

4. Mr. Dujon, SC, on behalf of the Claimant submits that based on the Judicial Studies Board Guidelines for the Assessment of Damages in Personal Injury Cases 12<sup>th</sup> ed 2013 (the Guidelines), the sum of \$70,000 be paid as compensation for pain and suffering and loss of amenities. He states that this global sum should be awarded to Mr. Corado based on nature and extent of his injuries to his wrist, under the heading "*injury resulting in significant permanent disability but where some useful movement remains*". In Claim No CV 2006-01035 ***Elva Dick-Nicholas v Jayson Hernandez and Capital Insurance Co Ltd***, Madam Justice Pemberton cited Wooding CJ in ***Cornilliac v St. Louis*** (1965) 7 WIR 491.

Her Ladyship stated: "*Wooding CJ in Cornilliac v St. Louis provided us with a time honoured approach to assessing General Damages in cases of this nature. The several sub-heads of damage to be contemplated are:*

- a) *The nature and extent of the injuries sustained ;*
- b) *The nature and gravity of the resulting physical disability;*
- c) *The pain and suffering which had to be endured;*
- d) *The loss of amenities suffered; and*
- e) *The extent to which, consequentially, pecuniary prospects have been materially affected."*

In the *Hernandez* case, Pemberton J added the heading of “*Future Medical Care*” to cover the estimates of the cost of obtaining medical attention in the future, as sums which were not already paid and are subject to change and which therefore fell within the ambit of General Damages.

5. Mr. Dujon, SC, cites the range of recovery awards as 19,800.00 pounds to 31,625.00 converted to Belize dollars using a rate of \$3.1414 to 1 pound (\$BZ 46,649.49 to \$BZ 74,510.08). Learned Counsel then applies a discount of 25% to reflect the different standard of living in England versus Belize as was done in Claim No. 485 of 2007 *Ismael Villanueva v Raymond Rancharan*. Mr. Waight reports in his final re-assessment of Mr. Corado performed on February 28<sup>th</sup>, 2015, that the x-rays of the left wrist show that the “*fracture has united in a displaced position with persistent subluxation of the wrist joint... There is significant restriction of movement of the left forearm and wrist joint and the x-ray appearances of the joint are compatible with the presence of degenerative osteoarthritis.*” Mr. Waight opines that “***a course of intense rehabilitative exercises performed under the supervision of a physical therapist may help to improve range of movement and function. He will however have significant permanent restriction of range of movement***”.
6. For the lesser injuries according to the Guidelines, in cases where despite significant injury there is little or no residual disability and where there has been a complete recovery within two years, the award is unlikely to exceed 6,215.00 pounds (BZ \$14,642.85 including the 25% discount). Mr. Dujon, SC, submits that the sum of

BZ \$14,642.85 would therefore be appropriate for the injury of diastasis of the symphysis pubis.

7. With regard to the subluxation of the left acromio-clavicular joint, Mr. Dujon, SC, again cites the Guidelines, *“The level of the award will depend on the extent of fracture, level of disability, residual symptoms and whether temporary or permanent and whether union is anatomically displaced.”* He submits that the range of recovery award is 4,180.00 pounds to 9,900.00 pounds (BZ \$9,900.00 to BZ \$23,324.90) with a median figure of BZ \$16,586.59. He asks that the sum of \$16,585.59 be awarded for this injury.
8. Mr. Dujon, SC, finally contends that the sum total of BZ \$101,229.44 having regard to the fact that a global award is to be made and the possible effects of overlap. Counsel suggests a figure of BZ \$90,000.00 (30% permanent residual disability as stated in the medical report of Mr. Waight) together with interest at 6% from 21<sup>st</sup> November, 2014 (date of accident). I see no reason to disagree with this figure based on the evidence and I therefore award Mr. Corado the sum of BZ \$90,000 as general damages for pain and suffering and loss of amenities.

### **Special Damages**

9. It is trite law that every item of special damage must be specifically pleaded and proven, and that the Court cannot award compensation unless there is adequate proof of loss and expenditures in the form of receipts, etc., ***British Transport Commission v. Gourley*** [1956] AC 185. In this case, Mr. Dujon, SC, claims the following as Special Damages incurred by Mr. Corado:

- 1) Medical Expenses for hospitalization, medical examination, pharmaceutical drugs, etc., totalling \$751.43 are proven by Exhibit OC 4 (Receipts from Karl Heusner Memorial Hospital, Belize City, Farmacia Monte Carmelo in Melchor de Mencos, Peten Guatemala, and Asobiensa in Melchor de Mencos, Peten Guatemala.)
- 2) Loss of Motor Bike at \$4,500 proven by Exhibit OC 7, invoice from Wolfe's Cycle Supply dated January 8<sup>th</sup>, 2015 stating that the bike is completely destroyed and hire purchase agreement with Jai Shree Ganesh Classic dated May 30<sup>th</sup>, 2014 showing Mr. Corado was still paying for the bike.
- 3) Loss of Earnings of \$13,000 has been claimed as Mr. Corado has been unable to work since the date of the accident until the end of June 2015 (medical report of Mr. Waight FRCS Ed. of 28<sup>th</sup> February, 2015, Exhibit OC 3). He also claims interest of 6% per annum until payment. Prior to this accident he worked as a Mason earning \$2,000 per month as evidenced by the letter dated January 13<sup>th</sup>, 2015 of Sheldon Mahung, Principal Architect of Mahung and Partners Ltd, Exhibit OC 1.
- 4) Physiotherapy Costs of BZ\$1,680.00 as proven by Exhibit OC 5, statement dated February 15<sup>th</sup>, 2015 from Juan Pablo Collado, Physiotherapist of The Physiotherapy Clinic, Belmopan, Belize which states that Mr. Corado is to receive sessions of physiotherapy two to three times per week for two months and that the cost per session is \$70 each. Mr. Waight FRCS Ed. also recommended physiotherapy sessions for Mr. Corado in his medical report.

I find all these items to be properly proven. The Court would deduct \$500 to reflect the depreciation in value of the motorbike for six months in use prior to the accident so damages of \$4,000 are awarded for loss of motorbike. I therefore award each amount as damages.

**General Damages**

Pain and suffering loss of amenities	\$90,000.00
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**Special Damages**

Medical expenses	\$751.43
Loss of motorbike	\$4,000.00

Actual Loss of earnings	\$13,000.00
Physiotherapy	\$ 1,680.00

Interest is awarded at the rate of 6% per annum from date of accident until date of payment.

Prescribed costs of 60% of the value of the claim is awarded to the Claimant to be paid by the Defendant as per Appendix B of the Civil Procedure Rules 2005.

***Dated this Monday, 25<sup>th</sup> day of January, 2016***

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**Michelle Arana  
Supreme Court Judge**