

IN THE SUPREME COURT OF BELIZE, A. D. 2011

CLAIM NO.785 OF 2011

BETWEEN

(LISTON MYERS

CLAIMANT

(

(AND

(

(DOUGLAS RODRIGUEZ

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Richard Bradley Jr. of Bradley & Co. for the Claimant

Mr. David Morales of Morales, Peyrefitte LLP for the Defendant

D E C I S I O N

1. This is an assessment of damages pursuant to a decision of this Court dated December 19th, 2016 where the Defendant was found liable in negligence to the Claimant as a result of a road traffic accident which occurred on December 12th, 2009 on the Western Highway. In the substantive case determining liability, Counsel for the Claimant Richard Bradley Jr. had included his submissions on the quantum of damages to be awarded; the submissions on behalf of the Defendant by his previous Counsel Michael Peyrefitte only addressed the issue of liability, so the court indicated in its written judgment delivered on December 19th, 2016 that it would allow the Defendant additional time to address on

quantum. David Morales Attorney at law of Morales, Peyrefitte LLP placed himself on record as Counsel for the Defendant on July 3rd, 2017. To date there have been no submissions on quantum filed on behalf of the Defendant, nor has there been any application for an extension of time to file any submissions. The court now gives its decision on the quantum of damages.

Legal Submissions on Quantum of Damages filed on behalf of the Claimant

2. Mr. Bradley relies on *Corniliac v. St. Louis* (1965) 7 WIR 491 where Wooding CJ enumerated the considerations a court takes into account in assessing general damages as follows:

- (i) The nature and extent of the injuries sustained;
- (ii) The nature and gravity of the resulting disability;
- (iii) The pain and suffering which had to be endured;
- (iv) The loss of amenities suffered; and
- (v) The extent to which consequentially, the appellants pecuniary prospects have been materially affected generally taken to be loss of earning capacity or loss of future earnings.

The Nature and Extent of Injuries Sustained

3. Mr. Bradley refers to the medical report of Dr. Andre Sosa, Orthopedic Surgeon, of Karl Heusner Memorial Hospital dated January 17th, 2011. That report certified the Claimant's injuries as traumatic amputation of the left forearm and Grade III A and open fracture of the left femur. He was treated with surgical repair of the stump of the left forearm and internal fixation of the left femur fracture. The left femur had later become

infected and had to be treated. Subsequently, he suffered a pathological fracture of the weakened femur bone. The Claimant had to use a plaster on the left lower limb.

The Nature and Gravity of the Resulting Disability

4. The prognosis was reserved as movement in the left elbow continued to be severely restricted. Mr. Meyers was diagnosed at this time with a permanent incapacity in excess of 50%.

Mr. Meyers then obtained a later report from Dr. Sosa dated 29th September, 2014 in which the Claimant's injuries were classified as an amputated left forearm, healed left thigh wounds, left ankle and left great toe. He has been rendered completely disabled and incapacitated at 100% and now is unable to perform gainful employment. He also has a noticeable gait to his walking. He has also suffered osteomyelitis. Mr. Bradley submits that in these circumstances the court should find that Mr. Meyers permanent incapacity is now 100%.

Pain and Suffering

5. Mr. Bradley draws the court's attention to the evidence of Mr. Meyers in his witness statement where he spoke of being "*in a lot of pain*" and experiencing "*severe pain in both of his legs*". The Claimant was admitted to the Karl Heusner Memorial Hospital from December 12th, 2009 until the 4th January, 2010 for a total of 20 days. He was subsequently readmitted to the said hospital from September 4th, 2010 until 10th September, 2010 for an additional 7 days, and again from 26th September, 2010 until 24th October, 2010 for a further 29 days, giving a total of 56 days of hospitalization.

Loss of Amenities

6. Mr. Bradley submits that the Claimant is now unable to ride motorcycles. He is also unable to continue his former employment as a tour guide, as he is unable to continue work on sailing and on tours. Learned Counsel also argues that Mr. Meyers will also now have diminished prospects for getting married and raising a family as a result of his disability.

Loss of Future Earnings

7. Mr. Bradley contends that the total loss of future earnings should be awarded at \$181,650.00 He arrives at this figure by using a multiplier of 25. The Claimant was working as a Tour Guide earning \$150.00 per week or \$7,800.00 per annum. He was born on August 9th, 1989 as shown by his birth certificate exhibited. He was therefore 20 years old at the time of the accident. Mr. Bradley relies on ***Frances Gill v. Devon Jones Belize*** SCA No. 4 of 2015, where Griffith J held the retirement age of the Claimant to be 60 years old; Learned Counsel therefore argues that this would mean that Mr. Meyers has 40 years before he retires.

Mr. Bradley also cites Belize SCA No. 356 of 1981 ***Zoila Perera v. Saldivar Bakery*** where the Claimant suffered loss of her arm at the time she was 19 years old; it was held by Moe CJ that the multiplier of 41 should be reduced to 7. Learned Counsel says that a multiplier of 25 would be appropriate in the case at bar. He argues that in the Perera case, Zoila Perera was not working at the time of the accident and she was married at a

time when it was usual for wives not to engage in employment; the Claimant in the present case was a working male of 20 years of age.

Using a multiplier of 25, multiplied by an annual income of \$7,800.00, the total sum would amount to \$195,000.00. From that sum, he then deducts \$13,350.00 (Special Damages to be calculated from the date of the accident on 12th December, 2009 to the date of trial on April 21st, 2016 for a total of 89 weeks). The Claimant's weekly income of \$150.00 weekly is then multiplied by 89 for a total of \$13,350.00; \$195,000.00 - \$13,350.00 = \$181,650.00.

Comparable Arm Injury Cases

8. Mr. Bradley then cites the awards made in cases where the Claimants suffered similar injuries:

- 1) Belize SCA No. 356 of 1981 ***Zoila Perera v. Saldivar Bakery*** where the Claimant's arm was torn off, the court awarded her \$27,000.00 in general damages;
- 2) Trinidad Supreme Court Action No. 984 of 1970 ***Mohammed v. Clifford*** where a 26 year old Plaintiff underwent an above the elbow amputation, the court awarded \$15,000.00 in general damages;
- 3) ***Prince Henry v. Simeon Brown*** 1981 where a 20 year old Plaintiff who had the right hand torn off and remained with 100% disability, was awarded \$20,000.00 as general damages;

- 4) ***Jamaica Geraldine Jackson v. Derrick Dhu*** 1981 where the 24 year old Plaintiff had four fingers amputated and 60% disability, she was awarded general damages of \$22,000.00.

Mr. Bradley also cites the “***Guidelines for the Assessment of General Damages in Personal Injury Cases***” which provides for a range from 70,650 pounds currency to 88,650 pounds currency. He recommends that the Court should award the Claimant at the top of the range at 88,660.

Comparable Leg Injury Cases

9. Mr. Bradley cites cases relied upon by Legall J. in Belize SCA No. 698 of 2008 ***Jacob***

Wiebe v. Wilward Jones:

- i) ***Stevens v. Dean Shanger Oxide Works*** 1981 (unreported) Kemp & Kemp Revised Edition 1982 Vol 2 para 12-305 where general damages of 18,000 pounds were awarded for injury to the left foot of a male person age 48;
- ii) ***Jones v. Houldar Martin Drilling*** July 1990 Kemp & Kemp where general damages were awarded in the sum of 16,000 pounds for fracture of the left ankle;
- iii) ***Morgan v. London Borough of Tower Hamlets***, October 1988 where general damages of 7,000 pounds were awarded for fracture of left ankle;

- iv) ***Paterson v. Rotherham Health Authority*** 1987 Kemp & Kemp para. 12-406 where general damages of 18,500 pounds were awarded for serious fracture of the left tibia;
- v) In the Caribbean there is the Jamaican case of ***Gravesandy v. Moore*** 1986 where general damages of 50,000 pounds were awarded for serious injury to the left leg.

Griffith J. in ***Gill v. Jones*** referred to three other cases on quantum of general damages awarded for leg injuries as follows:

- i) ***Alberto Idelfonso v. Ercelia Wagner*** Belize SCA No. 131 of 2014 where an award of \$50,000.00 as general damages was made for serious leg injury with a disability of 20%;
- ii) ***Pamela Watson v. Ricardo Palma*** Belize SCA No. 74 of 2014 where Claimant suffered paralysis in the leg with a disability of 70% , an award of \$200,000.00 for general damages was made;
- iii) ***Kelvin Aguilar v David Wang Belize Supreme Court No. 550 of 2014*** where general damages of \$82,000.00 were awarded for serious leg fracture with remaining limp.

Mr. Bradley further submits that guidance is also taken from the “***Guidelines for the Assessment of General Damages***” in personal injury cases 12 Ed. OUP 2013 which provides a range of 13,200 pounds currency to 22,440 pounds currency for fracture of

the left femur bones. Mr. Bradley recommends that the court award at the top of the range at 22,440 pounds. He further states that The Guidelines provide an award of 16,700 pounds currency for this type of injury and asks that the Court awards the Claimant this amount for his scarring. Following the approach used in *Javier Moreno v. Vincent Castellanos* Belize SCA No. 23 of 1998, Mr. Bradley urges the Court to multiply the amount of the English Pound currency by the exchange rate which is presently 3.02 and deduct the figure of 25% to reach the corresponding award in Belize dollars.

Loss of arm 88,660 pounds

Leg Injury 22,440 pounds

Scarring 16,700 pounds

Total 127,800 pounds

127,800 pounds x 3.02 = BZ\$385,956.00

BZ\$385,956 x 0.75 = BZ \$289,467.00

\$289,467 + \$181,650 = \$471,117.00 as total general damages

Special Damages

10. Mr. Bradley submits that the Loss of Earnings of the Claimant is calculated from the date of accident to date of trial at \$13,350.00. Transportation and medically related expense total \$14,773.00. Therefore the total special damages amount to \$28,123.00. If this amount is added to the \$471,117.00 for general damages, then the total amount of damages to be awarded would be \$499,240.00.

Decision

11. Mr. Bradley has correctly cited *Corneliac v. St. Louis* (Supra.) as the starting point for the manner in which damages should be assessed. Before this accident, the Claimant was an able bodied young man 20 years of age who was able to work for a living as a tour guide. As a result of this accident, he is now disabled as proven by the medical report of Dr. Sosa, Orthopedic Surgeon. Dr. Sosa stated in his report dated 17th January, 2011 that the Claimant was diagnosed with traumatic amputation of the left forearm and Grade IIIA. He also suffered an open fracture of the left femur as a result of road traffic accident which occurred on December 12th, 2009. Dr. Sosa stated that the Claimant was admitted and treated with surgical repair of the stump of the left forearm and internal fixation of the left femur fracture. The Claimant was released from the hospital on 4th January, 2010 and was re-admitted (4th to 10th September, 2010 and again on 26th September, 2010 to 24th October, 2010). At the time the Claim was filed, the level of his disability was above 50% as stated in Dr. Sosa's medical report dated 17th January, 2011. In his second medical report dated September 29th, 2014, Dr. Sosa certified that the level of Mr. Meyer's disability was now 100% due to scarring and atrophy to the left thigh, left ankle and left great toe; he is now unable to perform gainful employment as a result of these injuries.

I am most grateful to Counsel for the Claimant for his submissions which have greatly assisted the court. I agree with his calculation and I find the special damages for transportation and medical expenses proven in the amount of \$14,773.00. I also am satisfied that the amount of \$13,350.00 should be awarded to reflect the loss of

earnings suffered by the Claimant from the date of the accident in 2009 until date of trial in 2016. I award the sum of \$28,123.00 to the Claimant as Special Damages.

I also agree with the amount of general damages computed by Mr. Bradley. The purpose of an award of damages is to compensate the Claimant for his suffering and loss caused by the negligence of the Defendant and put him as close as possible to the position he would have been in if the accident had never occurred. He is now 100% disabled; he can no longer work as a Tour Guide and I agree with Mr. Bradley that the Claimant's prospects for marriage and a family are now greatly diminished as a result of this accident. He has suffered all this at the tender age of 20. I award the sum of \$471,117.00 as general damages for pain and suffering and loss of future earnings. The total sum of damages is therefore \$499,240.00.

I also award interest of 8% on the judgment sum from date of trial to present. Costs awarded to the Claimant to be paid by the Defendant to be agreed or assessed.

Dated this Wednesday, 26th day of July, 2016

**Michelle Arana
Supreme Court Judge**