

IN THE SUPREME COURT OF BELIZE, A.D. 2018

CLAIM NO: 322 of 2017

BETWEEN

**EDGAR NISSANI ARANA
(Administrator ad Litem of the
Estate of Julia Arana a.k.a. Julia Arzu)**

CLAIMANT

AND

ABELARDO JOSE MAI

DEFENDANT

Keywords: Negligence; Motor Vehicle Colliding with a Pedestrian; Personal Injury and Death; Poly Trauma; Multiple Bodily Injury; Subsequent Death of Accident Victim; Duty of Drivers; Liability of Parties; Proof of Negligence; Credibility of Witnesses; Claim on Behalf of Estate by administrator;

Contributory Negligence;

Injuries sustained was Serious Disruption of Cerebral Functions, Rapture of the Liver with Active Bleeding, and Fracture of the Right Pubic Bone,

;

Damages; Quantum of Damages; Assessment of Damages; Personal Injuries and Death; Multiple Bodily Injury; Pain and Suffering and Loss of Amenity; Conventional Award for Death;

Before the Honourable: Mr. Justice Courtney A. Abel

Hearing Dates: 03rd July 2018
04th July 2018
05th July 2018
13th July 2018
25th September 2018
26th September 2018.

Appearances:

Ms. Sheena Pitts for the Claimant.

Mrs. Julie-Ann Ellis Bradley for the Defendant

WRITTEN JUDGMENT
Orally Delivered on the 26th day of September 2018

Introduction

- [1] On the 26th May 2017 the Claimant, on behalf of the Estate of his deceased mother, Julia Arana a.k.a Julia Aliria Arzu (also known as “the deceased”), commenced the present claim against the Defendant.
- [2] The claim arose from a collision which occurred between a silver 2007 Toyota Hilux Pick Up truck licensed OW-C-03567 (“the truck”) and Julia Arana, in the early evening (6:30 – 7:00 pm , ‘dusk’, of the 1st April 2016 from which Julia Arana undoubtedly suffered multiple severe head and bodily injuries.
- [3] The Defendant, who is the owner, and on the occasion in question, was undoubtedly the driver of the truck, was at the time of the collision then travelling south along a straight path of the Philip Goldson Highway from Corozal to Orange Walk, when the collision occurred between the truck and Julia Arana near San Martin Gas Station, Trial Farm Village, Orange Walk District, Belize.
- [4] After being hospitalized for approximately 39 days and receiving a lifesaving operation and other medical treatment, Julia Arana, was discharged from hospital to the care of her family; but unfortunately she died some 19 days after being so discharged.
- [5] The contested allegation of the Claimant is that the Defendant negligently caused the death of the deceased and that the death was as a result of the collision.
- [6] The Defendant is vigorously contesting the allegations that he was at fault. He is denying that Julia Arana’s death was due to his negligence or breach of duty and that she died as a result of the injuries which she received from the collision; and he is alleging that she died from other causes unrelated to the accident.

[7] Before detailing and examining the main issues which are raised in the present case, it is necessary to delve a little more deeply into the background circumstances of the present case, to set a proper framework for the consideration and resolution of the dispute which arises about the law and facts which now have to be considered.

Background

Julia Arana

[8] Julia Arana was born on the 8th October 1958 and at the time of her death, on the 29th May 2016, she was 57 and the reputed wife of the witness Buenaventura Arana Romirez (“BAR”), both of whom are ethnic Garifuna persons having come from Livingston in Guatemala over thirty years ago. Since then they have been together for over 45 years.

[9] Julia Arana had 5 children with BAR of whom 4 are now alive.

[10] With all four children she maintained a very close contact, as well as their children (her grandchildren). The Claimant and the witness Bernardo Arana are two of their children.

[11] The relationship between BAR and Julia Arana, as described by the witnesses for the Claimant, which this court accepts, was extremely close and loving; and the family very close-knit and also loving.

[12] Indeed Julia Arana performed an integral role as a hardworking mother, grandmother, excellent cook, worker, and joint bread-winner with BAR, her husband. She worked not only for and within the family but externally as a domestic for different families for which she would earn roughly between \$150 – 200 per week. She also usually worked as a baby sitter (for which she earned roughly \$80.00 per week. In addition she made things to sell (tablata, coconut bread, rust on “fire hearth”) for which she earned roughly \$75.00 - \$100 per day. She spent roughly \$300.00 per week on groceries for the family. She also would send about \$200.00 every two to three weeks to her sister in Guatemala.

- [13] At the time of her death, and for about two years prior, both Julia Arana and her reputed husband had been living with the Claimant.
- [14] Julia Arana was undoubtedly an active, lively, strong and able-bodied much loved and appreciated woman who was a tower of strength to her family.
- [15] BAR testified, which this court accepts, that for all the years he knew Julia Arana he had never seen her drunk or disoriented or exercised poor judgement.

The Day of the Accident

- [16] On the 1st day of April, 2016, April fool's day, BAR, was working with his son, Bernardo, helping him to build his, Bernardo's, house in Indian Hill, Orange Walk.
- [17] That evening before 6 p.m. Julia Arana went to meet BAR after she had finished work, where she had been working as a domestic with the "Cuello" family in Orange Walk, and she, Bernardo, a friend named Carlos a.k.a 'Pitufo' and BAR left to go to the house where Bernardo was then living at the time.
- [18] Bernardo was living in a house directly across from San Martin Gas Station in Trial Farm Village, Orange Walk District, Belize.
- [19] Bernardo's house was on the right-hand side of the highway as if traveling from Orange Walk towards Corozal District from the direction of Belize City.
- [20] They took their time and walked there.
- [21] It took about fifteen to twenty minutes for all of them to get to the house from Bernardo's Indian Hill home to his then house which was #1123 Main Street, Trial Farm Village, Orange Walk District, Belize.
- [22] Between Bernardo's house, then under construction, and the road, are two columns which Bernardo referred to as 'Palapa' as well as car ramp, over an open drainage canal, which Bernardo had built for his car to enter his yard.
- [23] In the area of Bernardo's house the highway is straight and the roadway is approximately 20ft wide (each lane for travel in opposite directions being

10ft wide) with an additional 4ft wide hard shoulder on either side of the road. The road is separated by a dividing line indicating the two halves of the road to provide an indication to vehicles traveling north toward Chetumal and South toward Belize City, to stay on their respective sides of the highway.

- [24] When the party of four (4), including Julia Arana, reached their destination they sat down for about five minutes on a makeshift bench under the unfinished Palapa which Bernardo was building.
- [25] Julia Arana was sitting between Carlos a.k.a 'Pitufo' and Bernardo. BAR was closer to Carlos a.k.a 'Pitufo'. They talked generally.
- [26] Between 6:30 and 7 p.m. they all began to disperse. The evening still had light. It was not quite dark – what this court would describe as dusk.
- [27] At this time the Claimant was at his home in bed relaxing.
- [28] There is no evidence that the road conditions were other than dry and fine; and that visibility was other than good.
- [29] There were no street lamps on the highway. Save for the light of vehicles the only other light was a light on the premises of the gas station which was not directly on the highway. The Defendant's vehicle had light.
- [30] BAR crossed the road so that he could stop a taxi to take himself and Julia Arana home. Julia Arana was still talking with Bernardo and Carlos a.k.a 'Pitufo' under the Palapa when BAR started to cross the road. He had almost completed crossing the road when he stopped a black taxi that was passing by.
- [31] The taxi was coming from the direction of Corozal traveling towards Orange Walk and Belize City. He stopped the taxi partly on the shoulder of the highway and partly on the highway itself. So, the taxi was approximately in the middle of the shoulder and the highway — obstructing the highway because it did not completely pull off the highway and stopped on the shoulder. After the taxi had stopped BAR then turned around and called to his wife to tell her that he had managed to stop the taxi. He turned back

around and started talking to the taxi man telling him to wait for his wife who was coming.

- [32] While BAR was talking to the taxi man he was standing on the highway itself on the side of the highway as if traveling from Orange Walk to Belize City and was facing the taxi man at the front driver's side of the vehicle and conversing with him for approximately one to two minutes.
- [33] BAR then turned around to see if his wife was coming when he heard when his son, Bernado, tell his wife "Hasta mañana, mami." That means "until tomorrow, mommy." There was no other vehicle on the road on the same side from which Julia Arana was walking.
- [34] Julia Arana was already walking to cross the highway to meet BAR. BAR could hear the engine of a vehicle coming and he looked and saw that the vehicle was in the same lane where he was standing as if traveling from Corozal to Orange Walk (and to Belize City).
- [35] It is undisputed that the vehicle was the truck.
- [36] This is where the evidence becomes somewhat disputed.
- [37] What is undisputed is that a collision occurred between the truck and Julia Arana.
- [38] It is also not disputed that Bernardo was not looking in the direction of the accident at the time that it took place but he testified to having heard the engine of a vehicle revving as if "someone d mash gas hard". He heard Carlos say "boy tu mama" (meaning "boy your mother"). He turned around quickly and saw his mother on the ground on the opposite side of the highway as if in the direction going towards Belize City. He saw the pickup in front at a distance at a stop approximately between one hundred and ninety feet away from where he was standing and last left his mother. His mother was laying on the ground just a little bit passed the San Martin Gas Station sign near where there is a white mall road and the entrance/exit to the gas Station compound.

- [39] It is undisputed that BAR went to where his wife was on the highway, after being flung from where she was to cross over on the side of the highway where he was - but some distance away.
- [40] It is also undisputed that Julia Arana fell on the highway but the location of where she fell appears to be in dispute but with BAR testifying that it was near the San Martin Gas Station sign which was close to a white mall road.
- [41] BAR immediately went to his wife, lying on the highway, and grabbed and hugged her in his hand. He testified, which was unchallenged, that he felt very mad and was crying and trembling. That his wife looked bad. She had what appeared to be blood coming out of her head.
- [42] It is also unchallenged that Bar testified that he was shaking her because she appeared to him as if she was already dead. He saw a big ugly scratch on one of her legs. It was bleeding. He saw like her skin on one of legs near her calf looked like it was grated off.
- [43] Bernardo went to where Julia Arana and BAR were and grabbed Julia Arana.
- [44] There appears to be a dispute about what happens; with the Defendant alleging that Bernardo physically confronted him – but nothing really turns upon this.
- [45] Julia Arana was gasping for air.
- [46] There is also a dispute about what if anything transpired between BAR and the Defendant.
- [47] There is also a dispute about who helped to put Julia Arana into the truck and whether the Defendant helped.
- [48] In any event it is uncontested that BAR stayed behind trying to find and to pick up his wife's belongings, which were scattered on the road. He recalls only finding her Samsung flip cell phone which was broken. He was crying a lot and stopped trying to find his wife's belongings.
- [49] In the meantime the Claimant had received a telephone call and was told about the accident but because it was April's fool day he chose not to believe what he was told and only upon receiving a further call that he no

doubt hurriedly made his way to the hospital where he met his father and two of his brothers.

- [50] BAR then hurriedly went to the hospital to see his wife.
- [51] When BAR got there, he saw two Police. They only wrote his name down. They did not want him to go in to see his wife.
- [52] BAR saw his son, Bernardo, at the hospital. Both of them were crying. Bernardo was behaving bad and crying like he could not stop.
- [53] At the hospital Julia Arana was evaluated by the medical officer on duty at the Emergency room and Dr. Coleman was then called to evaluate and treat her.
- [54] Julia Arana was unconscious (comatose) and had suffered cranial and abdominal trauma. She had a fractured pelvis and closed head trauma, closed abdominal trauma, hepatic rupture, bodily lacerations and bruises all of which would be classified as poly trauma. She was diagnosed as having “*positive paraclinical indication of intraabdominal bleeding secondary to solid or hollow viscus injury*”.
- [55] Following his arrival at the hospital, and as the obviously respected member of the family, the Claimant immediately took charge and made contact with the hospital officials and was able to be the only person who had access to his mother.
- [56] The Claimant immediately started to deal with the hospital people and was authorised to provide the necessary consents. He was the only one who was able to see Julia Arana that night at the hospital. No one else was able to see her. A doctor spoke to the Claimant.
- [57] Julia Arana, in her injured state, was taken to the operating Room and, while the Claimant was present there, presented cardiac arrest, prior to surgery, and was reanimated by the Anesthesia personnel.
- [58] A surgery then had to be performed. She was operated upon, and a 500 cc of free intra-abdominal blood was found which was resultant from hepatic fracture from segment 5 and 6 of the liver (right hepatic lobe) Segment 5

and 6) Scares retroperitoneal bleeding around right kidney. Suture repairs of the hepatic injury was performed achieving '*hermmostasiia*'.

- [59] Julia Arana was comatose or unconscious and assessed to have suffered a substantial blunt trauma that caused serious disruption of cerebral functions, of having a rapture of the liver with active bleeding, and a fracture of the right pubic bone, all likely to have resulted from direct impact to her body by motor vehicle traveling between 30 and 50 mph.
- [60] There was no evidence that Julia Arana was under the influence of alcohol.
- [61] Julia Arana was referred to the Karl Heusner Memorial Hospital ("KMHM") in Belize City for neurosurgical evaluation of the degree and extent of cerebral injury as specific care was provided by a Neurosurgeon there as the Northern Regional Hospital does not provide Neurosurgical evaluation and care.
- [62] Julia Arana was transferred to the KMHM in the evening of the 1st April 2016 and arrived sometime after midnight the 2nd April 2016.
- [63] After a sleepless night BAR got ready and caught a 4:30 a.m. bus from Orange Walk to Belize City.
- [64] The Claimant rented a vehicle to take his siblings to Belize City to attend to his mother at the KMHM.

During Hospital Stay

- [65] When Julia Arana arrived at the KMHM on the 2nd April 2016 and was evaluated by doctors, including Dr Andres Vasquz Cruz (a Neurosurgeon) she was found to have serious injuries and was unresponsive. She was diagnosed as having
- “1. *Hepatic laceration (operated)*¹
 2. *Brain Contusion*²
 3. *Axonal Diffusion injury*³”.

¹ Ruptured liver which had been operated upon.

² A traumatic brain injury.

³ A bruising on the brain tissue.

- [66] She had a severe swollen brain. She had also suffered from a ruptured liver which had been operated upon and from which she was recovering.
- [67] Julia Arana's life expectancy was assessed to be good but recovery was expected to be lengthy and incomplete.
- [68] It was thought that the impact mechanism, which was likely to have been a direct impact, during the accident, caused acceleration and deceleration forces, which resulted in brain edema and contusion.
- [69] There was no record of pre-existing illness before April 2016.
- [70] Julia Arana was expected to suffer moderately severe permanent brain damage which would have resulted in disability and impairment of her cognitive senses and which would have resulted in lengthy and incomplete recovery.
- [71] Julia Arana also had to be transfused.
- [72] When BAR got to the hospital in Belize City he had to wait for the time when he was allowed to go in. He saw his wife who appeared to him to be in a bad condition. She could not talk. She had a lot of pipes and tubes in her mouth and nose. She was tied to the bed. He was told she was tied because she tried to take out the tubes after she had regained consciousness.
- [73] BAR saw a very big scar down her belly from under her chest down to her private part as well as a scar in her head which was shaved to expose the area.
- [74] BAR stayed with his wife every day she was in the hospital. He used to sleep at a hotel near the hospital at nights. The hotel charged BAR ten dollars (BZD\$10.00) a night. He got money from the Claimant to pay for the hotel. He would pay for the room and then give his son, the Claimant, the receipt to hold for him. He stayed at the hotel for the entire time his wife was in the hospital from the 2nd day of April, 2016 until his wife's discharge on the 9th day of May, 2018.
- [75] At some point Julia Arana woke up and was conscious again;
- [76] BAR stayed at the hospital, day and night, and took care of his wife bathing, feeding her and tending to her every needs.

- [77] The claimant attended at the hospital in the mornings and the evenings.
- [78] Julia Arana stayed at KMH from the 2nd April 2016 to 10th May 2016, approximately thirty nine days, during which period the family incurred certain expenses, not contested, in order to be near to Julia Arana and to assist in her care.

Discharge from the Hospital

- [79] Julia Arana was discharged with a comprehensive 'discharge plan' which included a diagnosis, follow-up care (including for her diet, ambulation, exercise), appointments and advised as to what to do in the case of fever, and neurological signs of loss of movement of her extremities. At the time of her discharge she had an active bedsore about two inches in diameter. She had to wear pampers.
- [80] The doctor told BAR things to do with his wife when they were leaving the hospital. The doctor gave him medication to buy to help with his wife's condition. This included pain medication to help with her pain.
- [81] When Julia Arana came out of the hospital the Claimant and his wife, and BAR took care of her every day.
- [82] The Claimant's wife fixed a bed in the hall of their home so that Julia Arana could be near to the Claimant; and BAR stayed in the same area with his wife.
- [83] The Claimant bought all the special food Julia Arana was advised to take by the doctor which was largely prepared by the Claimant's wife. The family tried to do all they could, and as they were advised to do.
- [84] Julia Arana's speech was affected and was reduced to a mumble or gestures and sometimes appeared weak, confused and in pain (despite being on pain medicine). She was immobile, dependent and got bed sores despite being moved by the Claimant, his wife or BAR, as they had been instructed by the hospital staff.
- [85] Julia Arana appeared to be sad and was clearly suffering and in pain. Her physical condition never really improved.

Death of Julia Arana

- [86] Eventually on the 29th day of May, 2016 Julia Arana died at her home.
- [87] She was taken to the Northern Regional Hospital and was pronounced dead at 10:30 am by Dr. Aida Coleman.

Post-Mortem Examination and Report

- [88] A post-mortem examination of the body of the deceased was performed by Dr. Loyden E. Ken, MD, Anatomic Pathologist, on the 31st May 2016.
- [89] An Autopsy took just over 3 hours. Arising from the autopsy a Post Mortem Examination Report, dated 31st May 2016, was prepared by the Pathologist.
- [90] The Post Mortem Examination Report, which was technical and replete with medical language, in its first section covered the basic information connected with the report (name, sex, ethnicity of the subject, her date and time of death, information about the Pathologist, the death certificate number, and manner of death (which was stated as pending).
- [91] In the report there were also sections dealing with: Anatomical Summary; Circumstances of Death; Identification; Attendance; External Description; Internal Examination; Cardiovascular System; Respiratory System; Gastrointestinal/hepatobiliary System; Genitourinary System; Hemolymphatic System; Endocrine System; Musculoskeletal System; Head and Central Nervous System; Histology; Toxicology; Evidence collected at Autopsy; Photography; Radiology; Diagrams Used; Final Anatomopathologic Conclusions; Other Diagnosis; Summary of Opinion as to Cause of Death.
- [92] In the Post Mortem Examination Report, which has been the subject of dispute, the Pathologist ascribed the death of Julia Arana to the following causes:

I (a) Acute Cardio-respiratory failure: being failure of the ventricles of the heart to contract with consequent absence of the heart beat leading to fluid buildup in the air sacs in the lungs. When that happens, lungs

cannot release oxygen into your blood. In turn, organs are unable to get enough oxygen-rich blood to function thus leading to death.

(b) Bilateral severe Bronchopneumonia with Abscedation: being multiple foci of acute inflammation of the bronchi and lungs, in which the alveoli and/or interstitium are affected involving both lungs with necrosis of the pulmonary tissue and formation of cavities containing necrotic debris or fluid caused by microbial infection.

II Saddle Pulmonary Thromboembolism: Formation in a blood vessel of a clot (thrombus) that breaks loose and is carried by the blood stream to plug the bifurcation of the pulmonary arteries.

[93] Frankly, as stated during the oral arguments, I have expressed a view of the Post Mortem Examination Report, which I will shortly repeat, which I consider is far from satisfactory. My conclusion on this report being based primarily on the evidence of Dr. Hugh E. Sanchez MBBSW; DM (Path) UWI, whose evidence I consider to be of far greater assistance, of greater authority, and whom I found far more credible as an expert witness than Dr. Loyden E. Ken, MD. As a result I have concluded that the cause of death of Julia Arana was not 'Acute Cardio-Respiratory Failure' (which I have described as a consequence and not a cause of death amounting to a statement that "her heart stopped beating and she stopped breathing").

[94] I accept Dr Sanchez's findings and the reasons he gave, that the cause of death is more likely than not 'Saddle Pulmonary Thromboembolism' and not 'Bilateral Severe Bronchopneumonia with Abscedation', the former being likely the direct cause of death and being a direct consequence of poly trauma or immobilization due to the traffic accident.

Funeral Arrangements

[95] After Julia Arana died the Claimant made all the funeral arrangements including the traditional Garifuna 'wake' before and after the funeral and "Nine Days" which is like a prayer session with drumming, singing and dancing.

[96] The actual funeral took place around 3rd or 4th June 2016.

Initiating Action

[97] BAR gave the Claimant permission to commence proceedings as he was so distraught by his wife's (the Deceased) passing.

The Court Proceedings

[98] On the 26th May 2017 the Claimant, on behalf of the Estate of his deceased mother commenced the present claim for negligence and breach of statutory duty against the Defendant, in relation to a road traffic accident which took place the evening of the 1st April 2016 near San Martin Gas Station, Trial Farm Village, Orange Walk District, Belize.

[99] Then a vehicle being driven by the Defendant struck Julia Arana, from which accident she suffered severe head and bodily injuries, and it is claimed, subsequently died on the 29th May 2017.

[100] The claim is for damages for the alleged negligence of the Defendant resulting in personal injury and subsequent death of the deceased arising from the accident

[101] On the 12th October the Defendant filed his Defence in which the alleged facts and circumstances of the accident are denied as well as any negligence and causation of the death are also denied.

[102] The first CMC was held and adjourned and on the 13th November 2017 on which occasion directions were given for disclosure.

[103] An adjourned CMC was held on the 4th December 2017 on which occasion directions were given in relation to further pleadings, expert evidence, and witness statements.

[104] In the Claimant's Reply, filed by the Claimant on the 19th December 2017, the Claimant largely joined issue with the Defendant.

[105] Between 2nd and the 5th March 2018 Witness Statements of fact witnesses were filed by the Claimants and Defendants and on the latter date the adjourned CMC was held and time was extended for Expert Reports (of Dr. Coleman and Dr. Ken) to be filed.

- [106] On the 19th March 2018 a further CMC was held on which occasion the witness Statement of Dr. Hugh Sanchez was deemed properly filed by the Claimant (and was therefore allowed) and the Defendant was permitted to file a report in response dealing with the same issue dealt with by Dr. Sanchez.
- [107] A further CMC was held on the 2nd May 2018 on which occasion the parties were permitted to ask written questions of the Expert witnesses, the case was referred to mediation, a pre-trial Review fixed for the 25th June 2018, and trial dates fixed for 3rd, 4th and 5th July 2018.
- [108] The parties did not settle the case at mediation and on the 25th June directions were given for the trial of the Claim and to file Pre-trial Memoranda.
- [109] The claim came on for hearing on the 3rd, 4th and 5th July 2018 on which occasion the witnesses of fact for the Claimant were the Claimant himself (the son of the deceased), his father Buenaventura Arana Romero (“BAR”), the husband of the deceased, and Bernardo Arana (also the son of the Deceased). Dr. Hugh Sanchez was the expert witness (pathologist) for the Claimant.
- [110] The Defendant testified on his own behalf. An expert witness was Dr. Loyden Ken (the pathologist who performed the post-mortem on the deceased).
- [111] The other witnesses permitted to testified as experts were Dr. William Coleman and Dr. Vasquez Cruz (the Drs. treating Julia Arana at the Northern Regional Hospital and KHMH respectively).
- [112] The court had the benefit of substantial written submissions in relation to liability (including contributory negligence) and quantum of damages. The Claimants submissions being filed on the 27th August 2018 and the Defendants being filed on the 24th August 2018. The court also heard oral submission from both Counsel.

Issues

- [113] Whether the collision was caused solely by the negligence of the Defendant or did both the Claimant and the deceased materially contribute to such collision; and if so in what proportions?
- [114] Whether the death of the deceased was caused by the collision?
- [115] What is the measure and quantum of damages if any due to the estate of the Deceased?

Who was the Cause of the Accident – how is culpability for the cause of the accident to be allocated?

The Law in relation to Negligence/Breach of Statutory Duty

- [116] The applicable law is not in dispute in the present case.
- [117] It is uncontested that a motorist always has a duty to drive with reasonable care.
- [118] The duty to drive with reasonable care is both statutory and arise at Common Law.
- [119] The statutory duty is contained in The Motor Vehicles and Road Traffic Act⁴, which states as follows: provides as follows:

82.- (1) Any person who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be on the road, commits an offence and is liable to a fine of two hundred and fifty dollars or to imprisonment for six months, or to both, and in the case of a second or subsequent conviction, either to a fine of five hundred dollars or to such imprisonment as aforesaid, or to both such fine and term of imprisonment.

⁴ Chapter 230, Laws of Belize, RE 2001.

(2) ...

(3) ...

83.-(1) Any person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road commits an offence and is liable to a fine of one hundred dollars and to be disqualified for holding or obtaining a Belize Driving Licence for such period as the court shall think fit.

.....
89.-(1) Where, owing to the presence of a vehicle on a road, an accident occurs whereby injury or damage is caused to any person, animal or property, the driver of the vehicle shall immediately stop, and-

(a)

(b) if requested by the injured person or by the owner of the damaged animal or property or some person on such owner's behalf, the driver shall give his name and address and particulars of his driving licence and the name and address of the owner of the vehicle;

.....
89 (3) Any person who fails to comply with or otherwise contravenes this section commits an offence.

.....
104. Nothing in this Act shall affect any liability of the driver or owner of a motor vehicle by virtue of any Act or at common law.

[120] The duty of care is neatly summarised in the Supreme Court of Jamaica case of **Cecil Brown v. Judith Green and Ideal Car Rental**⁵ in the judgment of McDonald Bishop who stated as follows:

“[i]t is clear that there is, indeed a common law duty as well as statutory duty for motorist to exercise reasonable care while operating their motor vehicle on a road and to take all necessary steps to avoid an accident.”

[121] The position of a driver is also correctly stated in the case of **Devon Higgins & Shanice Brown v Uriah Campbell & Winston Campbell & Orville Senior**⁶ from the decision of Thompson-James J who stated as follows:

“A driver of a vehicle on the road owes a duty of care to take proper care and not to cause damage to other road users whom he reasonably foresees is likely to be affected by his driving. In order to satisfy this duty he should keep a proper look out, avoids excessive speed and observe traffic rules and regulations.”⁷

[122] What is reasonable will always depend on the facts and circumstances of the case and in particular the circumstances with which a driver is faced at any given moment in time.

[123] From the English Court of Appeal case of **Qamili v Holt**⁸ it is to be observed that it is possible that even a complete failure to observe a pedestrian on the part of a driver until the moment of impact was not, in and of itself, presumptive of negligence. It was then observed by Rix LJ as follows:

“[20] That was a case of a kind which arises, as is the case before us today, where a collision occurs between a driver and

⁵ Claim No. 2006HCV02566 at paragraph 34. This case is referred to and the quoted passage is contained in the Supreme Court of Jamaica Consolidated Cases No 2011HCV04465 & 2011 HCV04716 Devon Higgins & Shanice Brown v Uriah Campbell & Winston Campbell & Orville Senior.

⁶ Ibid.

⁷ See Jowayne Clarke (bnf Anthony Clarke) and Anthony Clarke v Daniel Jankine; Claim 2001/C2011 delivered on October, 15, 2010.

⁸ [2009] EWCA Civ 1625

a pedestrian in circumstances where the pedestrian gave the driver very little time to stop or to avoid an accident. Those are always very troublesome cases and courts are required to look very carefully at the facts of those individual cases, to see whether there was some breach of duty on the part of the driver, such as travelling at an excessive speed for the circumstances, and of course, depending on the busyness of a main thoroughfare, particularly with school children about and such things [possibly elderly pedestrians], that may be a speed which is well within the speed limit – even that may be an excessive speed in the circumstances. Or the court is asked to consider whether the driver is in those cases was keeping a proper lookout especially if the driver should have known from the people on the streets or his familiarity with the locality, that children [possibly elderly pedestrians] would be about, and other such considerations such as elderly pedestrians.”

[124] The following paragraphs from the Judgement of Davis LJ, in an English Court of Appeal decision of **Birch (A Protected Party by his Litigation Friend John Birch) v Paulson**⁹, is instructive

“19. The judge found that by this time the defendant would have been some 7 to 8 seconds away from the point at which in the event the collision occurred. As the judge found, she was at this time traveling at around 40 miles an hour...”

21. The defendant, as the judge found, did not at this stage, when she saw the man standing on the edge of the kerb, reduce her speed further below around 40 miles per hour, nor did she steer her car towards the centre of the road. When her car was no more than about 27 metres from the claimant

⁹ CA, Civil Division, Case NO: B3/2011/1890; Neutral Citation Number: [2012] EWCA Civ 487.

he moved out into the road. It was far too late, as the judge found, for her at that speed to react to the danger or to take emergency braking or steering action...

...

32. Mr Willems stressed that it would have been very easy indeed for the defendant, as she approached this man on the kerb, either to have taken her foot off the accelerator or to have steered towards the centre of the road or both. No doubt it would have been relatively easy. But, as the judge rightly said, the legal test is not a question of the counsel of perfection using hindsight. Of course it is not, and drivers are not required to give absolute guarantees of safety towards pedestrians. The yardstick is by reference to reasonable care.

...

60. I accept that some cautious drivers might well have eased their foot off the accelerator as they came closer to the claimant, but I do not consider that it would have been negligent not to do so. If I am wrong about that I do not consider, for reasons I shall explain that this would have made any difference to the outcome.

62. I am quite satisfied that a reasonably careful driver would not have considered it necessary either to brake, or to steer towards the centre of the road, still less to do both of those things. I consider that for me to hold that a reasonably careful driver would consciously have decided to slow down and to steer to the offside as a safety precaution would be a decision based on hindsight given what happened, rather than on the information available to a reasonably careful person in such a position at the time. Accordingly, whilst I have every sympathy for the claimant given the appallingly serious consequences

of this collision, I am unable to find that the defendant was negligent as alleged."

The Law in relation to Quantum/Assessment of Damages

[125] As noted by Sykes J (as he then was), currently the CJ of the Supreme Court of Jamaica, in **Icilda Osbourne v George Barned and Metropolitan Management Transport Holdings Ltd & Anor**¹⁰, when he correctly observed¹¹ as follows, summarising well established principles in relation to the assessment of damages:

"The principlesare that assessment of damages in personal injury cases has objective and subjective elements which must be taken into account. The actual injury suffered is the objective part of the assessment. The awareness of the claimant and the knowledge that he or she will have to live with this injury for quite some time is part of the subjective portion of the assessment...The interaction between the subjective and the objective elements in light of other awards for similar injuries determines the actual award made to a particular claimant... "

[126] The well-known West Indian case of **Cornilliac v St. Louis**¹² outlines the factors to consider in assessing personal injury cases as follows: (i) the nature and extent of the injuries sustained, (ii) the nature and gravity of the resulting physical disability, (iii) the pain and suffering which had been endured, (iv) the loss of amenities suffered, and (v) the extent to which consequently the injured person's pecuniary prospects have been affected.

[127] I have already summarised the nature and extent of the injuries which Julia Arana sustained as well as the nature and gravity of the resulting physical disability, and the pain and suffering which had been endured, and the

¹⁰ Claim NO.2005 HCV 294 [TAB 13], at paragraph 3 and 4.

¹¹ Being guided by the principles enunciated by both Lord Morris and Lord Devlin in *H. West & Sons Ltd v Shephard* [1963] 2 All ER 625 at pages 633 D-G and 636E.

¹² (1965) 7 WIR 491.

temporary loss of amenities which she suffered before she died. Because she eventually died the last of the earlier mentioned factors may not be applicable in the present case.

Comparable Awards for Pain and Suffering and Loss of Amenities

[128] Of all the cases to which this court has been referred I consider the following are the most relevant namely **Oscar Corado v Consuelo Banner**¹³ in which the Claimant suffered injury to his wrist joint, pelvis and collarbone, was hospitalized for 5 days and lived suffering pain in the wrist, neck and right buttock and was awarded in January 2016 by Arana J in the sum of \$90,000.00 for pain and suffering and loss of amenities.

[129] Another relevant case is the Belize Supreme Court case of **Ernesto Flores Jr. & Yanera Flores v Duran Harban**¹⁴, the case of an 8 year old who suffered significant life-threatening injuries to his body and severe head trauma and permanent brain damage and was hospitalized (diagnosed with one percent chance of survival) for 40 days and lived but later diagnosed as suffering from permanent disability which included difficulty walking, of being able to speak clearly, spacity and deformity in his right lower extremity and neuro-behavioural changes needing lifelong physical rehabilitation and occupational speech therapy and neuro-behavioural speech therapy. An award was made on the 5th July 2013 by Arana J of the sum of \$250,000 as general damages.

[130] A further relevant case is **Marleni Magana (intended Administratrix of the Estate of Raul Magana & Seleni Magana & Julian Magana & Christian Magana (infants by their Next Fiend Maleni Magana) Enrique Montejo & Roque Riverol**¹⁵. The relevant claims are in respect of personal injuries suffered by Marlieni Magana, Julian Magana and Seleni Magana arising from car accident in April 2006.

¹³ Supreme Court of Belize Claim No 16 of 2015

¹⁴ Supreme Court of Belize Claim Not. 750 of 2010.

¹⁵ Supreme Court of Belize Consolidated Claims Nos: 189 of 2007 & 190 of 2007.

- [131] Marleni Magana was rendered unconscious by the impact and later reported as suffering 'politrauma and bifocal fracture of the right tibia'. She had a rod placed in her fractured leg which was removed and an open injury of 2-4 cm was observed in the middle portion of the leg. She underwent surgery the same day and about 7 days later the leg was affixed with intramedullary nails and an external fixture attached and she was released 16 days after. Her injury was described as complex and would have required 8-10 months for full consolidation with the implant requiring removal one to one and a half years after consolidation of the fractures. She was awarded \$65,000.00 general damages.
- [132] Julian Magana was a baby at the time of the accident and suffered politrama and bilateral fractures of the femurs and had to have external fixators placed. The recovery period forecast was 3-6 months with x-rays to be taken to assess the attachment of the fractures. There was evidence of severe pain experienced including headaches. She was awarded \$60,000.00 general damages.
- [133] Seleni Magana, who was 10 years old at the time of the accident, had injuries which included head trauma, intra-cranial hypertension, neurological deficit secondary to one and hip fracture. She was placed on a mechanical ventilator to keep her alive. Eight days after the accident Seleni had to have a 'left fronto-temporo-parietal craniectomy performed by a neuro and spinal surgeon which involved opening up her skull to gain access to the brain, remove a blood clot and allow the brain to swell without being crushed by the skull in order to heal as a life-saving operation . She was on a ventilator for two months in an induced coma. She also had a depressed (3mm) fracture of the left fronto-parietal bones; non-depressed fracture through the right mastoid and occipital bones; an extensive left fronto-parietal hypodensity consistent with edema/infarct; Significant left herismepheric cerebral edema with compression and collapse of the ipsilateral lateral ventricle and subfalcine herniation; and left posterior occipital lobe infarct; Comminuted left hip fracture with joint luxation and

displaced fragments. Apart from requiring pain medication the prognosis was not good including that Seleni would never be a functional citizen or have consensual relationships. With a mind of a 10 year old. She was awarded \$250,000.00 general damages.

The Evidence of the Accident

[134] Direct evidence of the accident was provided only by BAR and the Defendant.

[135] BAR testified as follows:

- (a) He described the truck as “coming very fast”.
- (b) That he noticed the truck drove out towards the other lane of the highway as if it was going to overtake the taxi that had stopped and was waiting for them.
- (c) That the truck drove out to overtake the taxi while his wife was already walking on the highway coming towards him.
- (d) That he realized the truck was not slowing down. He testified that he bawled out to his wife and shouted “Julie!”; but by the time he had cried out to his wife the truck, whilst overtaking, hit his wife and knocked her down.
- (e) That at this time, he heard Pitufu shout to Bernardo, “boy tu mama”.
- (f) That when his wife was coming across the highway the truck was travelling in such speed it was like someone was chasing it. The truck did not slow down.
- (g) That he did not hear the sound of tires on the highway screeching or when a driver pressed brakes at all. The truck hit his wife at the full speed it was going.
- (h) That when his wife was hit by the truck she was close to middle or dividing lines of the two-lane highway.
- (i) That immediately before the truck hit his wife the taxi man was making other passengers get into his vehicle.
- (j) That the taxi was not waiting on them anymore.

- (k) At the time when the truck hit his wife, the taxi, which was behind him, was beginning to drive away. By the time his wife was hit the taxi man did not stop instead he had hurriedly gone and drove away from the area.
- (l) That the truck was unable to stop right away.
- (m) That after the truck hit his wife it kept driving and he saw when it went to the right side of the road. It stopped about one hundred and seventy feet away from where his wife was hit. The truck stopped some good ways after the gas station compound.

[136] BAR was the only person for the Claimant who testified to having seen the accident and indeed the only person apart from the Defendant who testified about the immediate circumstances of the collision.

[137] The Defendant gave two versions of how the collision took place. The first was contained in a statement which was given to his insurance company in a motor accident report on the 15th April 2016 and in which he stated that at around 7; 25 pm he “...saw a lady run across the highway from the left hand side, running across the entire left lane and proceeded in the right lane where I was driving”. That he then tried to avoid hitting her with the vehicle; but was unable to do so.

[138] The other version was contained in a witness statement signed on the 28th February 2018 in which he testified as follows:

- (a) There was a vehicle coming in the opposite direction because I lowered my headlamp on the approach of this vehicle.
- (b) While still travelling on the right hand side of the highway in my proper lane, Julia Arana suddenly ran across from the left hand side of the highway into the path of my vehicle.
- (c) It happened so quickly that he had very little time to react and he braked and tried to swerve in order to avoid hitting her.
- (d) She had barely missed being hit by the oncoming vehicle as she had ran across its path.

- (e) He was able to come to a stop almost immediately at the time of the collision.
- (f) On impact she came into contact with the hood of the vehicle in the area of the left front fender of the truck in the area of the bumper, and grill.
- (g) She fell to the ground in front of the vehicle.

[139] It is also disputed by the Claimant as to where the truck was immediately following the accident.

[140] The truck was, according to Bernardo, 150 feet away. Bernardo testified that he saw the driver of the truck take a step out of the truck in a staggering motion and he got back into the truck when someone told him something, and then reversed back to where Julia Arana was lying.

[141] It is also disputed what happened immediately following the truck first stopping.

[142] BAR testified that he saw that the man had reversed near to where Julia Arana was and he noticed when the man come out of the truck that he looked like he nearly dropped out of the truck whilst he was coming out of it. When he set his foot to come out of the vehicle he went forward as if someone pushed him out of the truck. The man did not fall.

[143] There is a dispute as to what took place between BAR and the Defendant

[144] BAR testified that he went over to the Defendant and told the man “tu golpiastes mi esposa.” This means “you hurt my wife.” According to BAR he answered him and said, “sorry bout dat, unuh put ah eena d pickup because I was kerr ah dah d hospital.” Bar testified that he asked him “como te llama” which means “what is your name.” But that the man did not answer him. That he asked him “de donde vienes” This means “where do you come from?” And that the man did not answer him.

[145] BAR testified that everything happened so quickly and he recalls seeing his son and Pitufu put his wife in the man’s truck and drove off to the hospital.

[146] Bernardo testified that he and Carlos helped Julia Arana into the truck and then accompanied Julia to the hospital.

Submissions by Counsel for the Claimant

[147] It was submitted by Counsel for the Claimant that the central issue for determination is who to believe BAR or the Defendant.

[148] On the evidence, it was submitted that given the two competing versions of the Claimant he is not credible and that the court should accept the testimony of BAR.

Submissions by Counsel for the Defendant

[149] Counsel for the Defendant submits that the court should accept the testimony of the Defendant and disregard the statement to the Defendant's insurance company.

[150] In the alternative Counsel submits that should the Court not find that the collision was solely caused by the negligence of the deceased that the Court should find that the deceased materially contributed to the collision by entering the highway suddenly and without any or any adequate warning to oncoming traffic and was careless as to her own safety. That it is clear that at the time the deceased entered the highway the truck was already proceeding along the highway in plain sight. Also that it was manifestly unsafe for the deceased to have attempted to cross the highway at that time.

[151] It is submitted by Counsel for the Defendant that the cases have consistently established that failure to see someone prior to a collision is not negligence, and that regard must be had to whether the pedestrian was in a position to be seen; whether the driver failed to keep a proper lookout or drove at an inappropriate speed. That this was a highway and not a pedestrian crossing, nor were there any special circumstances. That the deceased was an adult who should be aware of her surroundings and able to take adequate precautions as to her own safety. Finally that It is likely that the deceased was impaired by alcohol when she attempted to cross the road.

[152] Counsel for the Defendant submits that at the time when the Defendant looked ahead there was no-one was crossing. His attention was clearly drawn to an oncoming vehicle so that he 'dipped' his lights when within seconds Julia Arana entered the roadway. That while the Defendant was required to be on the lookout he is constrained by matters within the limits of his visibility and it would be a counsel of perfection to say that the Defendant must see all parts of the highway at all the times. Finally that the fact that the Defendant didn't see Julia Arana until just about the point of impact does not fix negligence on him in these circumstances.

Determination

[153] Having carefully considered all of the evidence and heard Counsel I have no hesitation in accepting the submissions of Counsel for the Claimant.

[154] I consider that the Defendant is not a credible witness and I find that wherever his version of the description of the collision differs from that of BAR, I accept the evidence of BAR.

[155] This court accepts that both BAR and the Claimant are not disinterested bystanders but having seen and heard the testimony of BAR, which this court considers was graphic, clear and compelling, this court accepts that the Defendant was not keeping a proper lookout and was more likely than not driving at an excessive speed in all the circumstances of the case (including the fact that the highway was at the time populated by persons).

[156] Correspondingly of the two versions of the collisions which the Defendant presented to the court, this court prefers the latter version: that the Defendant did not see the deceased until the very last moment because of his excessive speed in all the circumstances of the case and his failure to keep a proper lookout.

[157] This court accepts that it is likely that the Defendant at or about the collision between the truck and the deceased was travelling in excess of 35 mph and nearer to 50 mph.

[158] This court accepts that the deceased may have been at or near the middle of the highway at the time of the collision and was not near the middle of

the highway at or about the median line and that the Defendant failed to notice the deceased presence because he was not keeping a proper lookout and was therefore driving in a negligent manner.

[159] This court does not accept that the deceased in any way or materially contributed to the collision by her carelessness by this court rejecting the version of the Defendant's case as presented to the insurance company.

[160] For completeness this court rejected the notion that the Deceased was under the influence of alcohol at the time of the collision. There was insufficient evidence for this court to arrive at this conclusion.

[161] This court considers that the existence or otherwise of a black taxi in the vicinity of the collision played a role, but albeit a minor role in the collision. The Defendant more likely than not may have swerved to avoid the taxi, but this court has concluded that it was the failure of the Defendant to keep a proper lookout while driving the truck at an excessive speed which was the main causal factors for the collision.

[162] This court does not accept that the presence or otherwise of an oncoming vehicle travelling in the opposite direction played any or any significant role in the collision.

[163] This court accepts that the Defendant may have dipped his headlights but that, if anything, given the likely presence of persons on the highway, including the elderly Julia Arana, the Defendant should have slowed down his vehicle in the residential area and business place of the gas station, rather than merely dip his headlights.

What was the Cause of the Death and if more than one causes how to allocate the causes?

[164] Although this issue was bitterly contested during the course of the trial; by the end of the trial it did not appear to be much of a live one.

[165] In any event given the severe poly trauma and the severe nature and extent of the personal injuries which the deceased received as a result and as a consequence of the collision, and the evidence, of Dr Sanchez, which this court has accepted, this court has concluded that such injuries were the

direct cause of her death; and that the deceased would not have died but for such injuries received.

[166] This court has carefully looked at and considered all the evidence in the case and has concluded that the deceased died as a result of her weakened condition which resulted from all of her injuries including the brain trauma, liver laceration and undisplaced fracture to pelvis all of which were injuries arising directly from the collision, as well as from the broncho-pneumonia with pulmonary abscedation which was likely a result of such injuries and her condition arising from the collision and not any hospital acquired infection.

[167] This court does not therefore find that the deceased died from other intervening or preexisting causes.

What is the measure and quantum of damages and is any damages due to the estate of the Deceased?

[168] I have carefully heard and considered the submissions of Counsel for both the Claimant and the Defendant.

[169] I have also carefully considered the very serious nature of the injuries which Julia Arana received as a result of the collision and the comparable cases which have been awarded by courts for such injuries.

[170] The first head of damage is for pain and suffering and loss of amenity. It is common ground that this involves the following:

- (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, and
- (iv) The loss of amenities suffered.

[171] In looking at the relevant cases already referred to of **Oscar Corado v Consuelo Banner¹⁶, Ernesto Flores Jr. & Yanera Flores v Duran**

¹⁶ Supreme Court of Belize Claim No 16 of 2015

Harban¹⁷, and, **Marleni Magana (intended Administratrix of the Estate of Raul Magana & Seleni Magana & Julian Magana & Christian Magana (infants by their Next Friend Maleni Magana) Enrique Montejo & Roque Riverol**¹⁸, this court considers that they provide a range of cases of the possible awards which this court should consider in relation to 'pain and suffering and loss of amenity'.

- [172] This Court, having carefully considered the case of **Marleni Magana (Intended Administratrix of the Estate of Raul Magana) v. Enrique Montejo and Roque Riverol (Consolidated Claims No. 189 & 190 of 2007)**, felt that this decision is somewhat out of sync in relation to general damages awarded for injuries for Marleni, Seleni, and Julian as opposed to **Ernesto Flores (bnf) Yanera Flores v Duran Harban Claim No. 750 of 2010** which latter case this Court finds some difficulty to reconcile with the former. Having look at all the authorities this Court prefers the case of **Ernesto Flores** which this court is more inclined to follow as providing the base line for 'Pain and Suffering and Loss of Amenities'.
- [173] However this court has taken into account that in the latter case because of the significant awards of Special Damages, which was made in relation to Seleni, that this may provide an explanation as to why the award of general damages may have been somewhat, even significantly, mitigated.
- [174] In view of the foregoing I had tentatively indicated a range of \$100, 000. 00 to \$150, 000. 00, but after more detailed submissions, I am minded increasing the range from \$100, 000. 00 to \$250, 000. 00.
- [175] Having carefully considered General Damages for pain and suffering and loss of amenities this Court considers, taking into account the injuries and all of the evidence relating to the suffering which Julia Arana endured and which culminated in her death, unlike any of the cases to which Counsel referred me this Court considers the nature and extent of the suffering was

¹⁷ Supreme Court of Belize Claim Not. 750 of 2010.

¹⁸ Supreme Court of Belize Consolidated Claims Nos: 189 of 2007 & 190 of 2007.

extreme and great warranting an award of \$175, 000. 00. Significant in the present case, as opposed to other cases, the injured person succumbed to her serious injuries.

[176] I will award Special Damages in the amount agreed between the parties being the sum of \$14,058.55

[177] For the loss of the deceased's life I would award the sum of \$20,490.81. In arriving at this figure this court relied on the significant researches and persuasive arguments raised by Counsel for the Claimant which suggested that the conventional figure for death is not the sum of BZ\$3,500,00 which had been awarded by the Hon. Chief Justice of Belize some thirteen years ago in the case of **Adita Canul & Ors. V Francis Alfaro & Alba Alfaro**¹⁹, and which appeared to have been followed last year by Young J in the Belize case of **Tiffany Tracy Williams v Carlos Jose Rodriguez & National Fishermen Producers & Co-Operative Society Limited**²⁰. It does not appear, however, that Young J's attention was brought to the House of Lords decision in **H. West & Son Ltd and another v. Shephard**²¹. This court does not consider that the sum in H. West & Son is unreasonable and rather this Court consider in all the circumstance this figure is fair.

[178] This figure of BZ\$3,500.00 cannot any longer be considered the conventional figure for so-called loss of expectation of life and in any event makes a mockery of the value, all-be-it notional or conventional, which can be placed on a person's life.

[179] In relation to gratuitous care I would award the sum of \$5,600.00 which appeared to this court to have been proved by the Claimant and BAR.

[180] In relation to loss of earnings I would award the sum of \$2,000 which again appeared to this court to have been proved.

¹⁹ Supreme Court Action No. 552 of 2000 and which Judgment was dated 18th My 2005

²⁰ Supreme Court Claim No. 542 of 2016. See paragraph 34 of the Judgment.

²¹ [1963] UKHL 3 (May 1963)

Costs

- [181] Because the Claimant has wholly succeeded as the representative of the estate of Julia Arana, the deceased, he is entitled to costs.
- [182] This case has been bitterly contested almost in relation to every conceivable issue which could have been raised.
- [183] This court does not consider that given the manner in which this case has been fought, and the complexity of the issues raised, that the level of the award does not fully reflect the amount of work which was involved in its preparation by the Claimant of this case and therefore does not consider that costs should be based on the value of the award. As a result this court does not consider that an award on the prescribed scale would fairly and properly reflect the amount of the costs which this court should make.
- [184] After listening to the Counsel for the parties this court is of the view that the costs ought to be as agreed by the parties or should otherwise be assessed; with such assessment being done by this court rather than the Registrar, as this court is fully aware of what has been involved in the prosecution of this bitterly contested trial.

Disposition

- [185] This Court will therefore grant judgment to the Claimant and will award special damages in the amount agreed being \$14,058.55 together with total general damages in the sum of \$203, 090.81 which is arrived at as follows:

General Damages

Pain and Suffering and Loss of Amenities	\$175, 000. 00
Gratuitous Care	\$ 5, 600. 00
Loss of Earnings	\$ 2, 000. 00
Loss of Expectation of Life	<u>\$ 20, 490. 81</u>
SUB TOTAL	<u>\$ 203, 090. 81</u>

Special Damages

	\$ 14, 058. 55
TOTAL	<u>\$ 217, 149. 36</u>

[186] The Defendant will be the Claimants costs in a sum agreed by the parties or should otherwise to be assessed by this court rather than the Registrar.

[187] Statutory rate of interest of 6% is awarded on the judgement from today's date.

The Hon. Mr. Justice Courtney A. Abel

9th October 2018