

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

CLAIM NO. 155 of 2018

**RICARDO JACOBO
LUIS JACOBO**

CLAIMANT

AND

CON MURPHEY

DEFENDANT

BEFORE the Honourable Madam Justice Sonya Young

By written submissions only

Written Submissions

Claimant – 4.7.2018

Decision

12.7.2018

Mr. Nicolas v. Dujon, S.C, for the Claimant.

Keywords: Default Judgment – Assessment of Damages – Negligent Driving – Personal Injuries Multiple Fractures of the Facial Bones – Facial Disfigurement and Scarring – Spleen – Fractured Humerus – Closed Head Injury – Loss of Consciousness – Fractured Ribs – Abdominal Injury – Fracture of Both Legs

JUDGMENT

1. This is an assessment of damages following default judgment. Briefly, Luis Jacobo was driving Ricardo Jacobo’s pickup truck along the Phillip Goldson Highway on the 3rd November, 2017 when the Defendant negligently caused

his SUV to collide with him. Ricardo was a passenger in the pickup. Both he and Luis suffered multiple injuries. They claim general damages for pain, suffering and loss of amenities and Ricardo claims special damages for the loss of the pickup, agricultural products that were being conveyed, income and medical and related expenses.

The Medical Evidence:

Luis Jacobo:

2. Luis relies on the medical report of Dr. John Waight following his assessment of 27th January, 2018. The Doctor reported the following injuries - lacerations to both sides of the face, multiple fractures of the facial bones including the left eye socket, a closed fracture of the left humerus, lacerations of the spleen with haemoperitoneum or blood in the abdominal cavity.
3. The spleen was eventually removed during a laparotomy shortly after admission to the hospital. That incision had healed satisfactorily but left a scar. The loss of the spleen would impair his immune system and render him more susceptible to infections including those of the pneumococcus.
4. The humerus was immobilized with a splint. The hand was well stabilized with preserved nerve function. However, the fracture failed to unite and he opined that internal fixation with bone grafting was required.
5. The facial fractures have significantly reduced and stabilized but healed leaving facial asymmetry. The asymmetry of the face impaired his bite and dental bracing was recommended. The facial lacerations were repaired but left large disfiguring scars. One scar was 6 cms long and thick. It extended

from the left cheek almost to the angle of the mouth. The other scar 5 cms long began just below the right nostril and reached a point just above the right angle of the mouth. He found the facial scars to be permanent, significantly impairing Luis's appearance.

6. He concluded that as a result Luis would be unable to work for a period of one year from the date of the accident. He determined his permanent residual disability at thirty-five percent.

Ricardo Jacobo:

7. Ricardo was also assessed on the 27th January, 2018, and was found to have sustained closed head injury with loss of consciousness, lacerations of the scalp and right forehead, closed fracture of a number of the right and left ribs with bilateral haemothoraces or blood within the chest cavity, closed abdominal injury with a laceration to the liver, an open fracture of the left femur and open fracture of the left tibia and fibula.
8. He had undergone surgery shortly after admission with placement of drainage tubes. His liver had been repaired during laparotomy. The wounds related to the fractures were attended. He was placed in the Intensive Care Unit following which he underwent surgery to the left femur for open reduction and the application of internal and external fixation to stabilize the fractures to the tibia and fibula. He was discharged on 5th December, 2017, on an out-patient basis. The wound to the head healed with a barely visible scar. But the 5cm long scar to the right frontal region of the face (his forehead) remains visible.

9. The chest wounds healed and he could breath normally but there was scarring. The laparotomy incision also healed well with scarring as did that over the left thigh. He was able to lift that leg. However he was unable to bear weight on the tibia and movement was by a wheel chair. He spoke with a husky voice.
10. Dr. Waight examined the x-rays which revealed a non-comminuted fracture of the left femur treated by internal fixation. It was anatomically positioned with some callus. He also found indications of what may be deep-seated infection in the bone. The fracture of the tibia was comminuted and displaced with suggestions of non-union.
11. He concluded that Ricardo had recovered from the head injury without apparent complication. However, the loss of consciousness indicated permanent damage to a number of brain cells. It was also unlikely that he would regain normal speech. He opined that the change in his voice was due to the prolonged period of intubation. His forehead would have a permanent scar. The right tibia would need further surgery for internal fixation and bone grafting. He would require a wheel chair for several months and would be unable to work for a period of one year from the date of the accident. He placed his permanent disability at thirty-five percent.

Luis Jacobo's Evidence:

12. At the time of the incident Luis was only 19 years old. He was hospitalized for forty-four days and underwent numerous surgical procedures. He continues to experience considerable pain on opening his mouth and he cannot chew any hard foods. His arm is painful and he is considerably aware of his facial disfigurement. He can no longer play football or go

hunting or fishing nor can he engage in his usual form of work in his uncle's fruit and vegetable business.

Ricardo Jacobo's Evidence:

13. Ricardo was thirty-three years old at the time. He spent thirty-two days in the hospital and also underwent several surgical procedures. Even now he experiences considerable pain in both legs and is only mobile using a wheel chair. It is painful to place any weight on either leg.
14. He cannot conduct his fruit and vegetable vendor business or pursue any other type of employment in his condition. He has had to relinquish his fishing and hunting hobbies. He says he has lost his pickup truck worth \$30,000 his produce worth \$3,000 and his earnings of \$1,875 per month. He has also incurred medical and related expenses to a total of \$6,627.00.

Assessment:

Pain and suffering and loss of amenities:

Luis Jacobo:

15. Counsel recommended \$135,000. as general damages and presented the following as comparables:

Yolanda Herrera v National Transport Service Ltd SCC 11/09 where Legal J awarded \$67,000 to a woman in her late twenties who had significant fracturing of facial bone with disfigurement far more severe than that occasioned by Luis. The Claimant there lost teeth and bone and bland tissue, had a seventy percent destruction of her lower lip, fragmentary fracture of the mandible and fragmentary fracture of the wrist. She was unable to chew and could eat only liquefied food.

16. *Albert Idelfonso v Ercelia Wagner & Gabriel Villafranco* where an award of \$50,000 was made for a closed fracture to the upper arm bone and an open fracture to the thigh bone. He also drew the Court's attention to the *Judicial College Guidelines for Assessment of General Damages in Personal Injury Cases (13th Ed)* which presents an award of £17,380 - £22,000 for loss of spleen with continuing risk of internal infection and disorders due to the damage to the immune system. A conversion with twenty-five percent reduction for Belize's cost of living gives a sum of \$35,113 to \$44,447.00.
17. Counsel then submitted that consideration should be given to Luis' loss of earning capacity. He said evidence of this could be gleaned from the fact that Luis could no longer help his uncle with his vendor business. This to my mind is not evidence of loss of earning capacity it is perhaps evidence of loss of future earnings if evidence of his earnings had been provided. The Court states this because the doctor was quite clear that Luis would be unable to work as he usually did for one year only. There is no evidence of a risk of him losing his employment or of being disadvantaged.
18. In *Anna Crawford v Arthur Belisle Claim No. 590/08 at paragraph 32* Legall J explained that: "*Loss of earning capacity is an award or compensation made by the Court because of the injured person's disadvantage in the labour market. It is compensation for the diminution due to the injury of the earning capacity of the injured person.*"
19. He then quoted from *Fairley John Thompson Ltd. 1973 2 Lloyd's Report 40* where Lord Denning explained the difference between loss of future earnings:

“It is important to realize the difference between an award for loss of future earnings and loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution of earning capacity is awarded as part of general damages.”

20. **Munkman on Damages for Personal Injuries and Death 11th Ed at paragraph 10-38** explains further that: *“there is no immediate loss and future loss is uncertain. This does not prevent an award of damages. The Court has to assess and value the chance that there will be actual loss sooner or later.”* Then at **10-39** *“... The Court has to apply its judgment to the relevant factors and assess a round figure.”*
21. What the Court considers in this case though is Luis’ disfigurement which is to his face and very visible. This may perhaps lead to some discrimination in the workplace. In this regard the Court comfortably awards him \$5000 for this risk of a disadvantage or vulnerability.
22. Luis’ disfigurement is permanent. He is only nineteen years old in a world where more attention seems to be placed on the physical aspects than is actually necessary. He will continue his journey somewhat diminished in their regard. He cannot chew well. He has no spleen and is susceptible to infections. The fracture of his hand has not united. It is unfortunate that no cost for the fixation of that fracture or for the brace work for his teeth was provided.
23. The Court being aware of the principles on which damages are assessed therefore awards general damages at \$130,000 for pain, suffering and loss of amenities and \$5,000 for his loss of earning capacity.

Ricardo Jacobo:

24. Counsel relied on:

Marleni Magaña et al v Enrique Montejo and another Claims 189 and 190/07 (Consolidated) where an award of \$65,000 was made for multiple fractures to the right tibia.

25. *Blanca Rodriguez as next friend of Zeslyn Lopez v Juan Carlos Alas Claim 521/17* with an award of \$60,000 for a non-depressed skull fracture and fracture of the right femur. Counsel made a suggestion of an overall figure of \$150,000. The Court finds the sum of \$130,000 to be more appropriate and an award in this sum will be made.
26. Special damages were sought by Ricardo only. He has proven through the mechanic's evidence that the pickup was valued at \$10,000 and was a total loss. By his own testimony he values his lost goods at \$3,000 he shall have this sum. He is self-employed and says he earns \$1,875.00 per month. *Munkman on Damages* (ibid) at *paragraph 10:13* states: "A self-employed person must produce proper accounts to show his earning before the accident; failure to do so will leave the Court to guess and prejudice the claim." He may even provide tax receipts. This Court considers that Ricardo sells fruits and vegetables. This is believable particularly where his pickup was carrying agricultural produce at the time of the incident.
27. The sum of \$1,875. per month seems reasonable in the circumstances. The Court shall award \$15,937.50 as special damages for loss of earnings for 8.5 months from the date of injury to the date of judgment.
28. He has also asked for \$6,627 in medical and related expenses. Three of those receipts are not in the Claimant's name and no explanation whatsoever has been provided for their inclusion. Their total of \$16. will be subtracted.

The sum of \$6,599, properly proven by receipts, is also awarded as part of special damages for medical expenses.

29. The Doctor has explained that Ricardo will be unable to work for a full year from the date of injury. There remains 3.5 more months. He will be awarded \$6,562.50 as part of the general damages for this loss of future income.

Determination:

30. General damages are awarded to Luis Jacobo in the sum of \$135,000 for pain suffering, loss of amenities and loss of earning capacity. That sum shall attract interest at the rate of 6% from the 3rd November, 2017 to the date of judgment.
31. General damages are award to Ricardo Jacobo in the sum of \$136,562.50 for pain, suffering, loss of amenities and loss of future earnings. Special damages are awarded to Ricardo Jacobo in the sum of \$35,536.50 for loss of his motor vehicle, produce, earnings and medical expenses
32. The special damages shall attract interest at the rate of 6% from 13th March, 2018, the date of the filing of the claim to the date of judgment.
33. Prescribed costs to the Claimants I depend on counsel to calculate.

**SONYA YOUNG
JUDGE OF THE SUPREME COURT**