SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2002/0867

BETWEEN:

(1) GAILIUS MATHURIN
(2) JOACHIM MATHURIN

Claimants

and

ANDREW PAUL

Defendant

Appearances:

Mrs. Veronica Barnard for the Claimants
Mr. Peter I. Foster with him Ms. Estelle George for the Defendant.

2003: October 28, November 06, December 10,11
2004: January 28, July 13

PERSONAL INJURIES ARISING OUT OF MOTOR VEHICULAR ACCIDENT...CLAIMANT WAS STANDING AT BACK OF VEHICLE CATCHING CRAB WHEN DEFENDANT'S VEHICLE COLLIDED WITH HIM AND HIS VEHICLE...WHO IS LIABLE...WAS THERE NEGLIGENCE ON THE PART OF DEFENDANT...CASE OF TART v G.W. CHITTY [1933] 2 K.B. 453 APPLIED... CONTRIBUTORY NEGLIGENCE... ...DAMAGES FOR PERSONAL INJURIES...CASES OF ALPHONSE v RAMNAUTH AND FENTON AUGUSTE v FRANCIS NEPTUNE RELIED UPON ...DAMAGES FOR PAIN & SUFFERING AND LOSS OF AMENITIES...LOSS OF FUTURE EARNINGS...NURSING CARE.

JUDGMENT

1. HARIPRASHAD-CHARLES J: On a very dark and wet night in September 2001, a terrible accident occurred near the Praslin Bridge in the Quarter of Micoud. Gaillus Mathurin was driving his father's Toyota pickup in a westerly direction with his mother on board seated in the passenger seat in the front. Just as he passed the Praslin Beach, he stopped on the left side of

the road to catch a crab. Then he drove further up and saw another crab. He stopped to catch it. As he was bending over to do so, he saw a light coming from behind him. He paid no heed to it. Suddenly, he felt an impact and knew nothing else. Mr. Andrew Paul's Toyota Jeep was in collision with him and his vehicle. He was trapped between the two vehicles and as a result, suffered serious personal injuries. He was converted from a healthy young man to a paraplegic with a sensory level at about T10/T12 and his chances of full recovery are slim.

2. Mr. Mathurin says that the collision was all Mr. Paul's fault and as a result, commenced these proceedings against him for damages for personal injuries. His father, Joachim Mathurin, the owner of the pickup, claimed special damages of $13,600.00 against Mr. Paul for the loss of his vehicle and loss of use for 7 days. Mr. Paul filed a defence and counterclaim on 1st July 2003. He denied negligence, and then pleaded in the alternative, contributory negligence on the part of Mr. Mathurin. In his counterclaim, he claimed special as well as general damages. Each party relied on particulars of negligence in standard form.

3. There are two inconsistent accounts of the reasons for the collision. Mr. Mathurin's account is that it was a dark night and there were no street lamps in the area. He had just passed the Praslin Beach when he stopped to catch a crab. Driving a little further ahead, he saw another crab. He pulled dead left off the road and got out. All of his vehicle lights were on including the park lights, hazard lights and head lamps. He needed them on in order to catch the crab. As he was bending behind his pickup to do so, he saw a light approaching in a distance but paid no heed to it as he was concentrating on not being bitten by the crab. Then he felt an impact and lost consciousness. The following morning when he regained consciousness, he was at St. Judes Hospital.

4. Mr. Paul says that he was on his way to Vieux Fort from Castries where he attended meetings. He stopped off at a cousin's in La Clery before he drove to Vieux Fort. He was driving at an average speed of between 20 to 30 m.p.h. As he approached the Praslin Bridge, he did not observe anything out of the ordinary. He slowed down to about 15 to 20 m.p.h. He still did not observe anything or anyone in front of him. The next thing he knew was that someone was

talking to him and he was bleeding from his forehead. He was also very dazed. Later on, he realized that he was involved in a collision.

5. The police were summoned to the scene and arrived shortly thereafter. P.C. 581 Ken Roberts was the investigating officer. On his arrival there, he noticed Mr. Mathurin's pickup on the left side of the road facing west with physical damage to its rear and left front. He also saw a Toyota Jeep a short distance behind the pickup with physical damage to its front. He also observed broken glass on the left side of the road facing west. There were a few spots of blood on the left side of the road on the bridge facing west. He also observed that the hazard and other lights of the pickup were on. He enquired of the drivers. Mr. Paul identified himself as the driver of the jeep. Mr. Mathurin was not present. He was taken to St. Judes Hospital. At that point, Officer Roberts marked off the position of both vehicles and made other necessary markings on the road with spray paint. Mr. Paul agreed to the markings.

6. Officer Roberts then proceeded to St. Judes Hospital where he saw Mr. Mathurin who was in a critical condition at the emergency room. He could not have spoken to him. He met Mary Mathurin, mother of Mr. Mathurin. She was a passenger in the pickup when the collision took place. She gave him some information.

7. The following morning, Officer Roberts returned to St. Judes Hospital. He spoke to Mr. Mathurin and obtained a short statement from him. Officer Roberts informed him that he may be prosecuted for the accident. Two days after, Mr. Mathurin was flown out of the State to the neighboring island of Martinique for surgery.

8. On Thursday, 15th November 2001, Officer Roberts revisited the scene. Present were Mr. Paul and Mrs. Mathurin. Both parties gave brief explanation as to how the accident occurred. Mrs. Mathurin said: "on our way my son stopped to catch two crabs. He then stopped before the bridge at Praslin next to the concrete slab to catch another crab. I was seated in front on the left. I put my head outside the van and turned back to watch Gaillus. All the lights on the van were on at the time. As soon as my son rest a piece of iron on the crab, I turned my head forward and I heard a bang behind me and my van just started going forward."

9. Mr. Paul said: “I came from business meeting in Castries and was proceeding to Vieux Fort driving at about 30 m.p.h. At about 8.00 p.m. I got to Praslin and all I remembered is that there was an impact. I couldn’t remember anything else.”

10. Officer Roberts proceeded to take measurements in the presence of both parties which he recorded in his pocket book. Both parties agreed to the measurements but they did not agree on the point of impact. Officer Roberts continued with his investigations and subsequently charged Mr. Paul for careless driving. Officer Roberts gave a brief report on the accident. He stated:

> “Motor Pickup Reg. No. FAR 692 was parked along the left side of the Praslin Highroad in a westerly direction with its hazards lights on. It has been established that Motor Jeep Reg. No. PC1045 driven by Andrew Paul was traveling along the said road in a westerly direction, collided into the rear of the said motor pickup and also pedestrian Gaillus Mathurin, who was standing on the left side of FAR 692.”

11. Officer Roberts opined that from his investigations, Mr. Mathurin’s vehicle could have been seen from a distance of over 200 feet away.

12. Several other witnesses testified at the trial. Of some significance is the testimony of Mr. Michael Doussa, a mini bus driver who claimed that he was the first person to arrive at the scene of the accident. He did not know either of the drivers. He alleged that he was driving his mini bus from Castries to Vieux Fort on the said night. When he approached the Praslin Bridge, he noticed some lights ahead. As he got closer, he realized that there was an accident. He got out of his vehicle and went to the scene. He went to the Jeep and found Mr. Paul in the driver’s seat. He spoke to him and saw his head bleeding.

13. Mr. Doussa then looked around and saw a pickup up against the left side of the Praslin Bridge. He saw “someone lying on the bridge under the pickup with his legs hanging over the bridge and over the river below.” There were 2 passengers in his van and he asked them to call the police. He alleged that at the time of the accident, the side of the road leading up to the bridge was covered with very tall elephant grass, at least 6 feet high right up to the road. He observed

also, that the lights on Mr. Paul's vehicle were still on and the lights on Mr. Mathurin's vehicle were off.

14. I pause to observe that this bit of evidence is in direct contradiction with the evidence given by Officer Roberts who testified that when he got to the scene of the accident, "the lights and hazards of the pickup were on."

15. Mrs. Mathurin was also a crucial witness because she was present at the time of the accident. She stressed that the lights were on when Mr. Paul collided with their vehicle. She also stated that after the accident, she felt dazed. She wanted to get out of the pickup but she could not as the passenger door was smashed. As she attempted to exit the vehicle, an unknown gentleman assisted her in doing so. She then saw her son lying on his back on the left side of the road on the grass verge. She started crying and called for help. She ran to Praslin to look for help and did not return to the scene of the accident.

16. Even though there were many witnesses in this case, the evidence, in my view, turned on the accounts given by the two drivers as to how the accident occurred. The testimony given by Mr. Paul in particular was not very helpful as he could not recall what occurred prior to the accident.

17. The Court visited the locus and got a better perspective of how and where the accident occurred. At the end of the day, I believed Officer Roberts' evidence that the lights on the pickup were on when he arrived at the scene but I did not believe that the hazard lights were on. I believed that in his eagerness to catch another crab, Mr. Mathurin hurriedly stopped his vehicle and did not concentrate on lights. Whatever lights were on at the time remained on. Mr. Foster appearing as Counsel for Mr. Paul argued that anyone could have turned on the lights. I agree but I did not believe that occurred in this case. I am also familiar with the methods used in catching crabs. If his lights were off, it would have been impossible to see and catch the crab. There was no evidence of a flashlight in use on the night in question.

18. With respect to the testimony of Mrs. Mathurin, I do not believe some aspects of it especially as it relates to where her son was discovered after the accident. It was not denied that the two vehicles ended up on the bridge and Mr. Mathurin was trapped between the vehicles. Therefore, he could not be on the grass verge as Mrs. Mathurin asserted. Undoubtedly, she was a self-serving witness and it is understandable. Her son is seriously injured and she is extremely hurt. As she said in cross-examination: "she really feels sorry for him."

19. Having analyzed the evidence in its entirety, the facts as I found them are as follows. On 19th September 2001 at about 8.00 p.m. Mr. Mathurin was driving his father's pickup along the Praslin/ Micoud Highway traveling on the left side of the road in a westerly direction. It was a very dark and wet night with no street lamps along the road. He had just passed the Praslin Beach when he stopped to catch a crab. He drove further up and spotted another crab. He stopped his vehicle to catch it. He was parked a few feet before the bridge on the pitched surface of the road. His head lamps were on but on dim beam. He bent over to catch the crab. He saw a light coming behind from him but he was more concerned with not being bitten.

20. Mr. Paul was heading down the road traveling in the same direction. He drove to the Praslin area and descended the gently sloping hills towards the Praslin Bridge. The corner where the collision occurred descends gently and then about 40 feet from the bridge, it begins to bend to the left. The corner is on ordinary days a corner that most people negotiate by slowing down slightly and then proceed through the bridge onto another straight stretch of road. Mr. Paul knew this. He had travelled on this bridge on many previous occasions. The least he would expect on a dark wet night was a vehicle parked on the road close to the bridge. His vehicle collided firstly with Mr. Mathurin and then with Mr. Mathurin's vehicle. As a consequence, Mr. Mathurin was trapped between the two vehicles which ended up on the Bridge. He was seriously injured.

Was Mr. Paul negligent on the night in question?

21. The issue which arises for consideration was whether Mr. Paul was negligent in colliding with Mr. Mathurin and then with his vehicle.

22. Article 985 of the Civil Code of Saint Lucia expressly provides as follows:

> "Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising."

23. Mrs. Barnard appearing as Counsel for the Mathurins contended that Mr. Mathurin was a pedestrian at the time of the collision in that he was standing outside of his vehicle which was stationary with its lights on. She posed the following question: if Mr. Mathurin had not been driving but he was merely standing where he was catching crabs and he had been hit by Mr. Paul, would the Court have found him negligent by merely standing or stooping over the crab? She answered in the negative. She submitted that the fact that he had been driving a vehicle and had stopped and was outside his vehicle does not make him more negligent than if he had been a walking pedestrian who did the same thing. Ingenious though this argument is, I do not think that Mr. Mathurin could be classified as a pedestrian. And even if he were, it is trite law that a pedestrian owes a duty of care to drivers on the road: Nance v British Columbia Electric Railway Co.[1]

24. On the other hand, Mr. Foster argued that Mr. Mathurin is wholly blameworthy for the accident in that he stopped his vehicle at a location which was dangerous to himself and to other road users as well and as such, created a serious obstruction or hazard. He next argued that a collision was inevitable because (i) no one would have expected someone to stop a vehicle at that location and (ii) on confronting such an obstruction on a dark night on a corner close to a bridge, no one would have been able to react within sufficient time to stop their vehicle in order to avoid the accident.

25. I agree entirely with Mr. Foster. But was Mr. Paul also negligent on the night in question? Or put another way, even though Mr. Mathurin was negligent to have stopped his vehicle at a location which was dangerous to other road users, could Mr. Paul have avoided the consequence of Mr. Mathurin's negligence?

[1] [1951] A.C. 601

26. Mr. Foster contended that there is no evidence that Mr. Paul was driving negligently or speeding. Learned Counsel argued that Mr. Mathurin cannot escape the consequences of his negligence because he caused the obstruction on the road such that Mr. Paul collided with him and with the vehicle he was driving.

27. Mrs. Barnard argued that Mr. Paul was negligent in that he failed to keep a proper look-out for the presence of other vehicles which may be on the road. She also argued that Mr. Paul could have seen at least 200 feet ahead of him and even if there were tall grass on the side of the road, that could not have obscured his visibility.

28. In order to establish the defence of contributory negligence, the defendant must prove, first that the claimant failed to take 'ordinary care of himself' or in other words, such care as a reasonable man would take for his own safety, and second, that his failure to take care was a contributory cause of the accident: du Parcq LJ in Lewis v Denye[2]. The standard of care in contributory negligence is what is reasonable in the circumstances, which in most cases corresponds to the standard of care in negligence. It does not depend on breach of duty to the defendant. It depends on foreseeability. Denning L.J. said in Jones v. Livox Quarries Ltd.[3]

> "Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless."

29. The present case bears close affinity with the case of Tart v G.W. Chitty and Company Limited[4]. The defendants' steam lorry was entering the town on a wild and stormy night when it was discovered that the tail light had gone out. The driver drew up at a dark spot in a street. The near side wheels were 9 inches from the kerb and the off wheels were just over the crown of the road which was 14 feet wide. Those in charge of the lorry tried to relight the rear lamp. While so engaged the plaintiff, who was riding a motor cycle, ran into the rear of the lorry and was seriously injured. He brought an action for damages for personal injuries sustained. The

[2] [1939] 1 All ER 310
[3] [1952] 2 Q.B. 608 at page 615
[4] [1933] 2 KB 453

defendants alleged that the plaintiff's own negligence was the sole or contributory cause of the accident. It was held that on the facts the accident occurred either because the plaintiff was not keeping a proper look-out or because he was going too quickly and had not his motor cycle under such control that he was able to avoid the collision, and in either event he was guilty of negligence. Lord Swift at page 457 said thus:

> "I am fortified in the view which I take of this case by the judgments of Rowlatt and McCardie JJ in Page v Richards & Draper. Rowlatt J. in that case said:
>
> > "The plaintiff, who was walking along the road, knew nothing material to this case except that he was struck in the back by a motor car, and the driver of the motor car never saw the plaintiff until he struck him. That is all. Upon those facts, the county court judge has found that there was no negligence on the part of the driver, but I do not think he can possibly have found that without making a mistake on a point of law or misdirecting himself, as it is sometimes called - misunderstanding the law and misapplying the principles. It seems to me that when a man drives a motor car along the road, he is bound to anticipate that there may be people or animals or things in the way at any moment, and he is bound to go not faster than will permit of his stopping or deflecting his course at any time to avoid anything he sees after he has seen it. If there is any difficulty in the way of seeing, as, for example, a fog, he must go slower in consequence. In a case like this, where a man is struck without the driver seeing him, the defendant is in this dilemma, either he was not keeping a sufficient look-out, or if was keeping the best look-out possible then he was going too fast for the look-out that could be kept. I really do not see how it can be said that there was no negligence in running into the back of a man. If he had had better lights or had kept a better look-out the probability is that the accident would never have happened" (emphasis mine).

30. In the instant case, there is undisputed fact that Mr. Paul drove his Jeep onto this obstructive pickup. There is no evidence to the contrary. That fact points to one conclusion only: either Mr. Paul was not keeping a proper lookout, in which case he was, as a matter of law, guilty of negligence, or if he was keeping a proper look-out, he did not slow down, stop or otherwise control his vehicle so as to avoid the collision. In those circumstances, I cannot see how Mr. Paul can avoid the dilemma in which he is put by law.

31. It is perfectly clear, however wrongly and improperly Mr. Mathurin acted in stopping on the road close to a bridge, that Mr. Paul might by the exercise of ordinary care have avoided the collision, and he must therefore have failed to exercise ordinary care, and, as a matter of law, is guilty of negligence.

32. In my judgment, Mr. Mathurin must take more blame for the accident than Mr. Paul. He was the creator of his own great misfortune. It was he who set in motion the whole train of events, by carelessly and unnecessarily stopping on a main road to catch a crab. To top it all, he saw a light coming but he was unconcerned. He was determined to catch the crab. In these circumstances, I therefore apportion liability for the accident at 25% to Mr. Paul and 75% to Mr. Mathurin.

QUANTUM OF DAMAGES

General Damages

33. Mr. Foster argued that Mr. Mathurin did not submit a medical report in accordance with Part 32 of CPR 2000 and as a result, there is no evidence before the court which can support his claim of injury. Therefore any claim in support thereof is of no monetary value and is not properly before the court. Mr. Foster cited the case of Husbands v Kyle[5], a decision of this very court to substantiate his argument. In my opinion, the facts and circumstances surrounding the instant case are distinguishable from the Husbands case. In that case, Counsel for the Claimant was seeking an adjournment and to vacate the trial date. Added to his dilemma, the expert who submitted his report was conspicuously absent on the day of trial and had not put in a witness statement. In this case, the doctor was at hand to testify and did testify at the trial. In addition, there are numerous medical reports which form part of the bundle of exhibits. Therefore, this submission is untenable.

34. The assessment of damages for injuries sustained as a result of an accident falls under two heads: general and special damages. In the case of Cornilliac v St. Louis[6], it was stated that the factors which ought to be borne in mind in assessing general damages are:

    (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

[5] High Court Civil Claim No. SLUHCV2001/1006.
[6] (1965) 7 W.I.R. 491

(v) The extent to which, consequently the injured person's pecuniary prospects have been materially affected.

The Nature and Extent of the Injuries sustained

35. The evidence disclosed that as a result of the accident, Mr. Mathurin who was then 23 years old sustained injuries to the back, face and limbs. Clinical, radiological and laboratory assessment confirmed that he had sustained the following injuries:

- Large laceration to the parietal region uncapping the calvaria.
- Laceration to the left side of his face.
- Abrasions on the face, both upper and lower limbs.
- Complete fracture dislocation of the spine at the level of the T12 and L1 vertebrae with complete paraplegia.

36. On the very night of the accident, Mr. Mathurin was admitted to the Orthopaedic Ward at St. Judes Hospital where he was commenced on pelvic traction to temporarily stabilize the spine. He was reviewed by the general surgeon who confirmed absence of intra-abdominal injury. Two days later, he was transferred to Hospital P. Aobda Quitman in Martinique for urgent stabilization of the spine. He had spinal stabilization with interpredicular screws on 14th September and was referred back to St. Judes Hospital on 21st September 2001 for follow-up care.

37. At St. Judes, he was observed to have a CSF fistula on 30th September 2001 for which he was initially managed conservatively with wound dressings but subsequently, he had secondary reinforcement of surgical wound on 5th October 2001. He was diagnosed to have developed a deep vein thrombosis on 10th October 2001 for which he was anti-coagulated. He was discharged from hospital on 2nd November 2001 for follow-up care in the orthopaedic and surgical out-patient clinics.

38. He is now a paraplegic and his chances of full recovery are slim. He will most likely remain in a state of paraplegia for the remainder of his life. He is also wheel chair ridden.

(a) Pain and Suffering and Loss of Amenities

39. From the evidence, it is clear that Mr. Mathurin cannot do anything much for himself as he is confined to a wheel chair. He is unable to have normal bowel movements and has to drink

prune juice regularly, at least 3 bottles a week. He uses pampers. He drinks a lot of milk as he cannot eat heavy food. He survives mainly on cornflakes and soft foods.

40. He requires daily therapy but he can only attend once per week as it costs him too much to travel. As he is paralyzed and confined to a wheel chair, he requires a nurse to look after him.

41. It is obvious that damages for pain and suffering are incapable of exact estimation and their assessment must necessarily be a matter of degree, based on the facts of each case. They must be assessed on the basis of giving reasonable compensation for the actual and prospective suffering entailed including that derived from the plaintiff's necessary medical care, operations and treatment.

42. I pause to observe that the Saint Lucian case of Fenton Auguste v Francis Neptune[7] is the authority on personal injuries and the facts are affined to the present case. There is also the case of Cletus Dolor v Alcide Dolor et al[8], a recent judgment of this Court.

43. In Fenton Auguste, Singh J.A. in quoting precedents that Matthew J. relied on in coming to his conclusion stated:

> "These cases show that in Saint Lucia in 1974, a 40 year old paraplegic was awarded $25,000.00. In 1960, a 60 year old Saint Lucian knee amputee confined to a wheel chair was awarded $37,500.00. In 1990, a paraplegic in Saint Vincent was awarded $65,000.00."

44. Mrs. Barnard submitted that a sum of $300,000.00 is reasonable in the circumstances. She relied heavily on Fenton Auguste. In that case, the Court of Appeal considered $75,000.00 to be a reasonable award for pain and suffering. If I were to award the sum of $300,000.00, I would be taking a very bold step especially when in January of this year, this court awarded $100,000.00 for pain and suffering to an acrobatic dancer, now a quadriplegic who was involved in a motor vehicular accident. I think that a sum of $90,000.00 for pain and suffering is reasonable taking into consideration the nature and extent of the injuries which Mr. Mathurin sustained, his personal awareness of pain and his capacity for suffering.

[7] Civil Appeal No. 6 of 1996 (unreported) (Saint Lucia)
[8] Claim No. SLUHCV2001/0555 (unreported) (Saint Lucia)

45. In terms of loss of amenities, it is authoritatively settled that it is in respect of the objective loss of amenities that the damages will be determined. Hence, loss of enjoyment of life and the hampering effect of the injuries in the carrying on of the normal social and personal routine of life, with the probable effect on the health and spirits of the injured party, are all proper considerations to be taken into account. Amongst the loss of the amenities of life, there are to be considered: the injured person's inability to engage in indoor and outdoor games, his dependence, to a greater or lesser extent, on the assistance of others in his daily life[9]; the inability to cope by looking after, caring for and rendering the accustomed services to a dependent; his sexual impotence[10]; any prejudice to the prospects of marriage[11] and his inability to lead the life he wants to lead and was able to lead before the injuries.[12]

46. In the present case, Mr. Mathurin was an avid sportsman. He played football, cricket, volleyball and dominoes for the Grass Street Youth and Sports Club. He was the captain of the club. He participated in domino tournaments. He holds 4 team medals: three for cricket competitions in 1993, 1997 and 1998 respectively and one for football in 2000. He was also sportsman of the year in 1998. He loves socializing and always attended dances and parties. He has a girlfriend who cares for him whenever she can. Also, while no evidence was elicited in this regard, his prospects of marriage are virtually non-existent.

47. For Loss of Amenities, I consider the sum of $150,000.00 to be reasonable.

(b) <u>Loss of Future Earnings</u>

48. As regards the assessment of general damages in respect of future loss of earnings, there are a number of uncertainties, which have to be brought in and these, necessarily, make their calculations more imprecise. They include such matters as the probable length of time of the claimant's future incapacity, his prospects of obtaining employment and the normal hazards of life. To reach a figure for the award of a lump sum, the normal method of assessment which is

[9] Heaps v Perrite Ltd [1937] a All E.R. 60, where a young labourer lost both his hands and would required daily assistance
[10] Cook v J.L.Kier & Co. Ltd. [1970] 1 W.L.R. 774
[11] Moriarty v McCarthy [1978] 1 W.L.R. 155
[12] Heaps v Perrie (supra)

used by the courts, is first to calculate, as accurately as possible, the net annual loss suffered, which is usually based on an average of the claimant's pre-accident "take-home" pay. This is to be used as the multiplicand.

The Multiplicand

49. Prior to the collision, Mr. Mathurin worked with Saint Lucia Fishing Company and Fond Estate as a maintenance person wherein he earned $40.00 daily. He also drove for his father. No daily wage was provided for being a driver.

50. I accepted Mr. Mathurin's evidence that he earned $40.00 per day as it was uncontroverted. Roughly calculated, he earned approximately $800.00 per month or $9,600.00 a year. I would fix the multiplicand at $9,600.00. I am conscious of the principles laid down in Cookson v Knowles[13] and followed in Alphonse v Ramnauth[14] and Fenton Auguste, that for the purpose of arriving at the multiplicand, the basis should be the least amount that Mr. Mathurin would have been earning if he had continued working without being injured.

The Multiplier

51. In Alphonse [supra], Singh J.A. said:

> "In determining the multiplier, a Court should be mindful that it is assessing general and not special damages. That it is evaluating prospects and that it is a once for all and final assessment. It must take into account the many contingencies, vicissitudes and imponderables of life. It must remember that the plaintiff is getting a lump sum instead of several smaller sums spread over the years and that the award is intended to compensate the plaintiff for the money he would have earned during his normal working life but for the accident."

52. Mrs. Barnard submitted that Mr. Mathurin's working life should be 65 years as was in Fenton Auguste. I agree with her. Applying the principles laid down in the cases of Alphonse and Fenton Auguste, I would give Mr. Mathurin a working life of 65 years and fix a multiplier of 18.

53. Using a multiplier of 18 and a multiplicand of $9,600.00, the award under this head is $172,800.00.

[13] (1979) AC 556
[14] Civil Appeal No. 1 of 1996 (unreported) British Virgin Islands

(c) Cost of Nursing Care

54. In her report, Dr. Daghue, the Orthopaedic Surgeon at St. Judes Hospital did not allude to whether Mr. Mathurin would need regular nursing care for the rest of his life. But in Fenton Auguste, the evidence of the doctor was that Mr. Auguste would need regular nursing care for the rest of his life. In Cletus Dolor's case, Dr. Richardson St. Rose opined that Cletus would require regular nursing care for the rest of his life. Mr. Mathurin who has similar physical disability would also need someone to look after his personal hygiene on a daily basis. He would need someone to provide him with proper nutrition. At present, his brother, Gary stays home to take care of him when his parents are out on the farm. Sometimes, his girlfriend assists when she is not working.

55. In Fenton Auguste, the award of $100.00 per month by Matthew J. was held to be erroneous. The Court of Appeal awarded $60.00 per day or $21,900.00 per year ($60.00 x 365 days). Some adjustment was made for the contingency that his condition may improve. I can do no better than to adopt that figure. Using a multiplier of 10, my award under this head is therefore $219,000.00.

(d) Pampers

56. Mr. Mathurin is confined to a wheel chair. He remains paralyzed and unable to move. He continues to use pampers. He has difficulty in using his bowels. He requires lots of prune juice at least 3 bottles a week. He uses one packet of pampers every three days; the cost of which is $49.36. This does not seem to be an exaggeration of the amount of pampers used. I accepted a figure of $493.60 as the monthly cost of pampers or $5,923.20 annually. With a multiplier of 18 and not 10 (since he will have to use pampers for the rest of his life) I would make an award of $106,617.60. No evidence was adduced with respect of the catheter bag. I will refrain from making any award under this sub-head.

(e) Doctor's visits

57. In Fenton Auguste, Matthew J. awarded $300.00 for the occasional doctor's visits. The Court of Appeal did not interfere with that figure. Using a multiplier of 18, I will award $5,400.00 under this head.

58. In total, the amount of general damages to be awarded in this claim is $743,817.60. However, this being a lump sum payment and taken into consideration the vagaries and imponderables of life, I would scale down this figure to $700,000.00.

Special Damages

(a) Loss of earnings

59. The accident occurred in September 2001. He would have lost approximately 24 months employment from the date of the accident to the date of trial, at the rate of $800.00 per month. The award under this head would be $19,200.00.

(b) Medical and related expenses

60. In his amended statement of claim, Mr. Mathurin particularized medical and related expenses which he incurred as a result of the accident. He claimed the sum of $41,976.27 as evidenced by receipts. I will therefore award him $41,976.27 as special damages.

(c) Pampers

61. For pampers purchased up to the date of trial at $5,923.20 annually for 2 years. Under this head, I would award the sum of $11,846.40.

(d) Cost of care provided by family

62. Over the last 2 years, Mr. Mathurin's brother, Gary stayed home to care for him. The measure of damages to be awarded under this head is the reasonable value of the services rendered to Mr. Mathurin gratuitously by his brother, in the provision of nursing care or domestic assistance: Hunte v Severs.[15] The Court of Appeal in Fenton Auguste found the figure awarded by the trial judge to be inordinately low. A more practical award was $500.00 per month or $6,000.00 annually. For 2 years, the award would be $12,000.00.

63. In total, special damages awarded to Mr. Mathurin would be $85,022.67.

[15] (1994) 2 WLR 602

The Outcome For Gaillus Mathurin

64. The outcome is as follows:

(a) Pain, Suffering and Loss of amenities	$240,000.00	Interest at the rate of 6% per annum from date of service of claim form to date of trial: 23/10/03
(b) Loss of Future Earnings	$172,800.00	No interest
(c) Nursing Care	$219.000.00	No Interest
(d) Pampers	$106,617.60	No Interest
(e) Doctor's Visits	$5,400.00	No interest

TOTAL GENERAL DAMAGES in the amount of $743, 817.60 has been scaled down to $700,000.00.

TOTAL SPECIAL DAMAGES	$85,022.67	Interest at the rate of 3% per annum from the date of the accident to date of trial-23/10/03

65. The total global sum awarded to Gaillus Mathurin is $785,022.67. Twenty-five percent of the amount would be $196,255.66 with interest at a rate of 6% per annum from the date of judgment to the date of payment.

66. I make no deductions for Income Tax or NIS Contributions as no evidence was adduced in that regard.

The outcome for Mr. Joachim Mathurin

67. The second claimant, Mr. Joachim Mathurin was the owner of the pickup which was driven by his son. It was written off as a result of the accident. He incurred the following expenses as a result:

Pre-accident market value	$15,000.00	
Less salvage	$3,000.00	$12,000.00
Cost of police report		$ 200.00
TOTAL		$12,200.00

68. There is no dispute in respect of this amount. In addition, he claimed the loss of use of his vehicle for 7 days at $200.00 per day which is reasonable in the circumstances. He will be entitled to twenty-five per cent of the aggregate sum of $13,600.00 which is 3,400.00.

The outcome for Mr. Andrew Paul

69. On 1st July 2003, Mr. Paul filed an amended defence and counterclaim. In it, he counterclaimed for damages to his vehicle in the sum of $36,000.00 and wrecker fees of $280.00 less salvage value of $8,000.00. He also alleged that due to the extensive damage of the vehicle, it was deemed a constructive loss (see report dated 20 September 2001 exhibited as "AP1"). In the circumstances, he claimed the sum of $38,472.00 less salvage value of $7,000.00. This figure has not been challenged. I will therefore award to him the sum of $31,472.00 for the vehicle less 25 per cent for his blameworthiness making a total of $23,604.00. Mr. Paul also claimed general damages for the blow to his head and for pain and suffering. There is no evidence to substantiate a claim for personal injuries.

Costs

70. At the end of the trial, it was agreed that should Mr. Mathurin be successful, he would be awarded the costs of $10,000.00. Since Mr. Mathurin was one-quarter successful, I would award him Costs of $2,500.00.

Conclusion

71. In the premises, the Order of this Court is as follows:

    (1) That there be judgment for the first claimant, Gaillus Mathurin in the sum of $196,255.66 with interest at a rate of 6% per annum from the date of judgment to the date of payment.

    (2) That there will be judgment for the second claimant, Joachim Mathurin in the sum of $3,400.00 with interest at a rate of 6% per annum from the date of judgment to the date of payment.

(3) That there will be judgment on the counterclaim for the defendant, Andrew Paul in the sum of $23,604.00 with interest at a rate of 6% per annum from the date of judgment to the date of payment.

(4) That there will be Costs to both claimants in the sum of $2,500.00.

72. Last but not least, I am grateful to both Mrs. Barnard and Mr. Foster for their industry and immeasurable assistance to this Court.

INDRA HARIPRASHAD-CHARLES

High Court Judge