

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2005/0166

SYLVENA MORSON

Claimant

And

LERON LEWIS

Defendant

Appearances:

Ms. C. Debra Burnette for the Claimant
Ms. Veronica Thomas for the Defendant.

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2006: November 6th

2007: January 29th
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JUDGMENT

- [1] **Blenman J, This** is a claim for damages arising out of a motor vehicular accident.
- [2] Ms. Sylvena Morson (Ms. Morson) lives and worked in the United States of America. Ms. Morson alleges that she has suffered personal injuries as a result of a collision between motor car No. R 635, in which she was a passenger and, driven by Mr. Thibou (Mr. Thibou) and motor vehicle No. A 17480 driven by Mr. Leron Lewis (Mr. Lewis). The collision of the motor vehicles occurred on the 28th December 2004.
- [3] Ms. Morson contends that Mr. Lewis was solely responsible for the accident due to his negligent driving. She also alleges that Mr. Lewis drove his vehicle too fast, failed to keep any proper lookout or any sufficient regard for the presence of motor vehicle No. R 635 on the said road; failed to stop to slow down or to serve or in any other way so as to manage or control the vehicle.
- [4] Ms. Morson complains that she has suffered injury to her arm (a comminuted fracture) and had to be hospitalized for three days. She lost her job since she was forced to remain in

Antigua and Barbuda as a consequence of her injuries. She has therefore filed an Amended Claim against Mr. Lewis in which she seeks general damages in the sum of \$50,000.00 and special damages in the sum of \$37,886.00 for the injuries and losses she has suffered.

[5] For his part, Mr. Lewis denies that he was at fault or caused the accident. Mr. Lewis avers that the accident was caused when a cow butted the vehicle he was driving causing it to spin around, slide and roll back on the right side of the road. Mr. Lewis contends that, moments later the vehicle driven by Mr. Thibou approached his car from behind and collided with his (Lewis') vehicle.

[6] Mr. Lewis also disputes that Ms. Morson has lost her job as a consequence of the injuries she may have received and puts her to the strict proof.

[7] Additionally, Mr. Lewis denies that any injury or loss Ms. Morson may have suffered was caused solely by his negligence as alleged or at all.

[8] Ultimately, Mr. Lewis disputes any liability for the loss and/or injuries that Ms. Morson may have suffered.

Issues

[9] The issues that arise for the Court's determination are:

- (a) Whether Mr. Lewis is liable for the accident;
- (b) What damage, if any, Mrs. Morson is entitled to.

[10] In support of her Amended Claim, Ms. Morson and Mr. Thibou and Ms. Carey Martin (Ms. Martin) filed witness statements and were cross examined. Police Corporal Raymond DeBelotte was summoned by Counsel appearing on behalf of Ms. Morson and he testified in the matter.

[12] For the defence, Mr. Lewis alone filed a witness statement and was cross examined. The parties also filed an agreed bundle of documents to which the Court has had recourse.

Claimant's Evidence

- [13] Ms. Morson says that she lives and worked in New York, United States of America. She worked as a caregiver up to the date of the accident. She took care of an elderly person.
- [14] On the 20th December 2004, she was a passenger in a motor vehicle, rented from D and C Car, driven by Mr. Thibou. The vehicle was travelling along the Airport Road. As soon as the vehicle had crossed over from the stop light at the junction of Old Parham Road and Airport Road and in the vicinity of Gourmet Basket, her daughter who was in the vehicle said something and, she (Ms. Morson) looked and saw headlights which looked as though they were coming towards them.
- [15] Mr. Thibou "pulled the vehicle to the left side of the road and she immediately heard a loud bang". She started to cry for pain and tried to lift her left hand but could not. After the accident she was taken to the hospital where she was hospitalized and treated for a broken arm. Her hands were put in a cast and she was treated at the out patient department for several months. The cast was removed in March of that year (2005).
- [16] Ms. Morson suffered a comminuted fracture at the union of the middle and lower thirds of the humerus. She still suffers with swelling and stiffness.
- [17] Ms. Morson claimed the following special damages:

Medical Report	40.00
Medical attention	105.00
Photographs	20.00
Police Report	50.00
Medication	172.00
Taxi services (20/01/05 – 19/05/05)	440.00
Nursing care (02/01/05 – 19/05/05) @ 350.00 per week	7,000.00
Loss of Earnings to date @USD360.00 per week (31 weeks)	31,132.00
Ticket to return to United States of America	<u>1,436.40</u>
Total	<u>\$40,395.40</u>

- [18] Learned Counsel Ms. Veronica Thomas (Ms. Thomas) cross examined Ms. Morson, at length, in order to test the veracity of her evidence in so far as the injuries that were alleged to have been sustained. In addition, the defence strongly resisted Ms. Morson's claim that she had lost her job as a caregiver.
- [19] Ms. Morson said that before traveling to Antigua and Barbuda in December 2004, she was employed by Ms. Lalli as a caregiver in the United States of America. She took 6 weeks holiday without pay and was due to return on 15th February 2005. She tendered in evidence a job letter from her last employer (Ms. Lalli) but when she was asked by Ms. Thomas to explain the absence of any information to substantiate her claim that she was due to return to work in February 2005, Ms. Morson said that she did not request that specific information from Ms. Lalli.
- [20] Ms. Morson maintained during cross examination that she was due to return to the United States of America in February 2005 and had purchased a return ticket for this. However, she had to remain in Antigua and Barbuda until December 2005 to receive physiotherapy treatment. She said that she was a United States Citizen and would have been able to have her physiotherapy done in the United States of America.
- [21] Ms. Morson admitted under intense cross examination that she was not advised by the local doctor not to travel. She insisted that at the time of the accident she was employed in the United States of America as a care giver and had requested and obtained 2(two) months leave from her employer in order to visit Antigua and Barbuda. In fact, she had taken 6 weeks vacation without pay. While she was in Antigua and Barbuda her employers had obtained the service of a person to work in her (Morson's) stead until her return. She disagreed that her employment in the United States of America had come to an end and maintained that she was due back in the United States of America in February. When she was asked by Counsel why didn't she get her employer to indicate the date of her resumption of duties, Ms. Morson said that she did try to get this and later when pressed further Ms. Morson said that it was none of her employer's business. She later

said that she did not give up anything, rather the person whom she was taking care of in the United States of America had died while she was in Antigua and Barbuda.

[22] During further cross examination Ms. Morson insisted that she had a return airline ticket for the United States of America but due to the fact that she was forced to remain in Antigua and Barbuda longer than February 2005 she had to purchase another ticket but was unable to produce the old ticket. In fact, she "returned the old ticket when she purchased the new ticket."

[23] Ms. Morson stated further that she was held up in Antigua and Barbuda and could not return. She told the doctor in Antigua and Barbuda that she had to return to the United States of America and the doctor gave her a letter to remain here since she was still ill with her arm and required further therapy.

[24] As a result of the injury she sustained, initially she could not use her arm, and persons had to bathe her. She could not pick up a coin or pin her bra. She says she is still experiencing pain and has to take pain killers. At times she experiences numbness.

[25] During re examination Ms. Morson said that her children paid for the services of a nurse to care for her.

[26] Next, Mr. Tyrone Thibou (Mr. Thibou) testified that he was driving a rented motor vehicle registration No.R 635 along Airport Road in a southerly direction. He was driving at about 30 miles per hour. He passed the stop lights at the junction of Old Parham Road and Airport Road and after he had traveled at about 500 meters, he saw a light from another vehicle coming towards him. He slowed down his vehicle and at this time his vehicle was on its proper side of the road. He pulled his vehicle to the left shoulder of the road and stopped. The oncoming vehicle spun around and the rear of the vehicle collided with the vehicle he was driving. The driver of the other vehicle later came out of the vehicle and asked Mr. Thibou "if everything is o.k". Mr. Thibou said that Mr. Lewis told him that "I hit a cow, that's what caused me to spin around in the road, I just took my car out of the shop to

pick up my girlfriend and my tyres are not good." While he was speaking to Mr. Thibou his mother Ms. Morson called out to him and told him "to put her arm in her lap, it hurts a lot"

[27] A male police officer took statement from Mr. Lewis in his (Thibou) presence and Mr. Lewis told the police officer that "he was coming up Airport Road on his way to the Airport, hit a cow, lost control and skid into the car that he (Thibou) was driving.

[28] Mr. Thibou said that he (Thibou) told the police that he saw a speeding light coming towards him on the same side of the road, and he pulled closer to the left shoulder when the car, vehicle registration No. A 17480 driven by the Defendant spun around, skidded and then collided with the front of his vehicle.

[29] He too, said that (his mother) Ms. Morson who was a passenger in his vehicle at the time of the accident sustained a broken arm. She was originally scheduled to return to the United States of America on 15th February 2005, but as a consequence of the injuries she sustained she was forced to remain in Antigua and Barbuda for a longer period of time. He had to purchase a new ticket for his mother. As part of his evidence in chief, Mr. Thibou said that his tyres did not screech and he denied that his vehicle hit the back of Mr. Lewis' car. Rather, it was Mr. Lewis' car that "opened in the road and the back of the car collided with his (Thibou's) vehicle."

[30] During cross examination by Ms. Thomas, Mr. Thibou insisted that Mr. Lewis had told him his tyres were not good. In relation to nursing care, he said that he did not employ the services of someone to care his mother.

[31] The next witness to testify was the police officer Corporal Raymond DeBelotte who told the Court that he was the investigating officer. On receiving the report he visited the scene of the accident and spoke to both drivers who agreed and identified the point of impact to him. Corporal DeBelotte was a very independent witness who had no interest to serve. He said that "the width of the road – 24 feet. From the point of impact to the eastern side of the road – 5 feet. Right in front of motor vehicle to west of road – 16 feet. From right

rear of Mr. Lewis' vehicle is 12 feet. From right rear of Mr. Lewis' motor car – 16 feet." He was clear that the collision occurred on the eastern side of the road.

[32] During cross examination by Ms. Thomas, Corporal DeBelotte said that Mr. Lewis told him that he (Lewis) was traveling from south to North and saw four cows he pulled his vehicle to the left so as to avoid the cows and there was a cow on that side there so he swerved back to the right and the side of his vehicle struck a cow causing his vehicle to swing around into the road. His vehicle having spun around on the road was hit by an oncoming car.

[33] Ms. Martin who is the manager of D and C Car Rentals told the Court that D and C Car Rentals own the Nissan Almera motor vehicle No. R 635 which it rented to Mr. Thibou. After the accident between that vehicle and the vehicle driven by Mr. Lewis, motor vehicle No. R 635 was a total wreck and was written off.

Defendant's Evidence

[34] Mr. Lewis stated that he was driving his vehicle No. A17480 from South to North along Airport Road and there were no other vehicles on the road at the time. Upon reaching the Gourmet Basket Supermarket he turned on his bright lights and saw a large black cow in front of the vehicle. He swerved to the right to avoid hitting the cow. "As he swerved to his right he noticed there were other large black cows in the road and he had to swerve back on the left side of the road to avoid hitting them."

[35] He next deposed at paragraph 5 of his witness statement that:

"Upon returning to the left side of the road, a cow which was on the left side of the road butted the left rear quarter panel of the vehicle, causing the car to spin around, skid and roll backwards on the right side of the road. He then applied his brakes and his car slowed down almost to a stand still."

[36] In paragraph 6 he said:

"I heard tyres screeching behind me. I looked in my rear view mirror and saw a vehicle coming straight at me from behind. I braced myself on the impact. Soon after I felt an impact to the rear of my vehicle."

[37] Mr. Lewis further stated at paragraph 10 of his witness statement that:

"The passengers in R 635 were taken away by the ambulance. He waited on the scene until the tow truck arrived to take away the vehicle. While waiting he observed skid marks of approximately 20 feet extending from behind R 635."

[38] During cross examination by Learned Counsel Ms. Burnette, Mr. Lewis denied ever telling Mr. Thibou that his tyres were not good. He maintained that at all times he told Mr. Thibou that "a cow hit his vehicle causing it to spin around."

[39] During further cross examination by Learned Counsel Ms. Burnette, Mr. Lewis admitted that on the day of the accident that he had told Mr. Thibou that he (Lewis) had hit a cow. He however denied telling Mr. Thibou that the tyres of his vehicle were not good. Mr. Lewis agreed under further cross examination that he was on the wrong side of the road when the collision occurred.

[40] Mr. Lewis stated clearly that he was not disputing liability for the accident. While Mr. Lewis had stated earlier that he did not see Corporal DeBelotte take measurements, Mr. Lewis said that "taking his knowledge of measurements he agreed with the measurements which Corporal DeBelotte provided."

[41] During re examination by Ms. Thomas, Mr. Lewis resiled from his earlier position and said that he told Mr. Thibou that "a cow had hit his (Lewis') vehicle and not that he (Lewis) had hit a cow."

Defendant's Submissions on Liability

[42] Ms. Thomas appearing on behalf of Mr. Lewis urged the Court to accept Mr. Lewis' evidence in preference to that adduced on behalf of Ms. Morson. She submitted that the Court should find that Mr. Thibou was negligent and further that Mr. Thibou caused the accident. Ms. Thomas stated that the Court should accept that Mr. Lewis' vehicle was hit by a cow and that this occurred despite his best efforts to avoid the cows and this after he had just swerved from another cow. In the circumstances Mr. Lewis was not negligent.

[43] Ms. Thomas relied on **Henderson v Henry Jenkins and Sons [1969] 3 ALL E.R 756**, **Parkinson v Liverpool Corporation [1950] ALL ER 367** in support of her contention that the evidence adduced by the Claimant falls far short below that required to establish that Mr. Lewis did not act as a prudent reasonable driver. Counsel took issue with Ms. Morson's evidence that Mr. Lewis drove negligently and caused the collision between the vehicles as a result of which Mrs. Morson sustained injuries.

Claimant's Submissions on Liability

[44] Ms. Burnette, on behalf of Ms. Morson, submitted that the Court should accept Ms. Morson's uncontroverted evidence that the accident occurred on the eastern or left side of the road, this evidence was corroborated by the testimony of Corporal DeBelotte who told the Court that the accident occurred on the eastern side of the road. Ms. Burnette stated that Mr. Lewis himself testified during cross examination that he is not denying liability. Further, during cross examination Mr. Lewis stated he agreed with his measurements provided.

[45] Therefore, stated Ms. Burnette, Mr. Lewis' liability for the accident has been established both on the evidence provided by Ms. Morson and based also on Mr. Thibou's own admission.

Court Findings and Analyses

[46] I have perused the agreed bundle of documents and I have reviewed the evidence of the witnesses in chief and that adduced under cross examination that sought to test it, I am of the opinion that on the issue of liability, for the most part that the witnesses who testified on behalf of Ms. Morson are more credible and truthful than Mr. Lewis. On a balance of probability, I accept the evidence led on behalf of Ms. Morson in preference to that provided by Mr. Lewis wherever a conflict exists. I find Corporal DeBelotte's evidence very helpful.

[47] Accordingly, the following represents my findings of fact: On the day in question Mr. Thibou was driving a rented motor car registration No. R 635 along the Airport Road, with Ms. Morson and others as passengers were in the vehicle. Mr. Lewis was driving his motor vehicle in the opposite direction and was approaching Mr. Thibou's vehicle, when Mr. Lewis' vehicle hit a cow. Mr. Lewis did not see the cow. In fact there were a number of cows on the road and instead of stopping and bringing his vehicle to a complete standstill, Mr. Lewis swerved to the left and there was yet another cow in the left and swerved back to the right. The left rear of the car struck the cow and his vehicle spun around and struck the oncoming car. In the circumstances that obtained, I have no doubt that Mr. Lewis drove his vehicle negligently and is totally to blame for the accident.

Damages

[48] The quantum of damages that the Court should award is left to be determined.

[49] I propose to deal firstly with Ms. Morson's claims for taxi expenses.

Taxi Expenses

[50] Ms. Morson claims the sum of \$440.00 as damages for the cost of taxi services. This sum is accepted by Mr. Lewis.

Miscellaneous Expenses

[51] Next, Ms. Morson has claimed the following sums as special damages and they have not been disputed namely:

Medical report	\$40.00
Medical attention	\$105.00
Photographs	\$20.00
Police Report	\$50.00
Medication	<u>\$172.10</u>
Total	<u>\$387.10</u>

[52] The total sum awarded as special damages, so far, is \$827.10

Nursing Care

Claimant's Submissions

- [53] Ms. Burnette submitted that the Court should award Ms. Morson the sum of \$7,000.00 as damages for nursing care from 20th January to 19th May 2005. She says that Ms. Morson's children had to pay for these services for Ms. Morson at \$350.00 per week.

Defendant's Submissions

- [54] Ms. Thomas urged the Court not to accede to Ms. Burnette's request, since the clear evidence from Ms. Morson is that she did not actually engage the services of a nurse during the time she was unable to use her arm. Ms. Thomas quite correctly referred the Court to **Daley v General Steam Navigation [1980] 3 ALL ER 696** which is authority for the proposition that the Claimant is entitled to a reasonable sum in respect of services performed by third parties. Referring to the Rehabilitation Unit Report Form, Ms. Thomas submitted that as early as 24th March 2005, the doctor had recommended active exercise for Ms. Morson's elbow; therefore, she was expected to use her arm as part of the rehabilitation programme. Ms. Thomas posited that Ms. Morson should only be awarded the cost of care for a period of 11 weeks from 1st January to 23rd March 2005 and at a substantially reduced rate than \$350.00

Court's Findings and Analyses - Nursing Care

- [55] I have no doubt that as a consequence of her fractured arm Ms. Morson was unable to do some things for herself and this is so particularly from the 20th January 2005 – March 2005 to the time when the cast was removed. While I do not believe that Ms. Morson actually hired the services of a person to take care of her, I have no doubt that she was unable to do things for herself and obtained assistance in this regard. It is the law that a Claimant is entitled to a reasonable sum in respect of services performed by third parties consequent on the Defendant's action irrespective of contractual or moral obligation. See: **Daly v General Steam Navigation [1980] 3 ALL ER 696** *ibid*.

[56] I have no doubt that Ms Morson received physiotherapy treatment until June 2005. I am of the view that the sum of \$200.00 per week is a reasonable sum and that a reasonable period of time is for the period of time for which she has claimed namely: 20th January 2005 to the 19th May 2005. I therefore award Ms. Morson the sum of \$4,000.00 as damages to cover her nursing care.

Loss of Earnings

[57] Ms. Morson claims loss of earnings from the date on which she was expected to return to work to the date of the filing of the Claim Form on 15th February 2005 to 20th September 2005. She says that she earned US\$360.00 per week.

[58] Ms. Burnette submitted that the Court should accept the letter of Ms. Morson's employer in support of Ms. Morson's contention that she had a job to return to but could not do so since she had to obtain physiotherapy in Antigua and Barbuda up to May 2005. Further, Ms. Burnette stated that when Ms. Morson received the letter from her employer, it was written in April 2005; in past tense since Ms. Morson though initially intending to return to United States of America to her employment was unable to do so. She asks the Court to accept that Ms. Morson had taken leave without pay from December 2004 to February 2005.

Defendant's Submissions

[59] Ms. Thomas submitted that Ms. Morson has provided no credible evidence in support of her contention that she was employed at the time of accident. The job letter submitted that Ms. Morson showed that she was employed from November 2003 to December 2004. Ms. Thomas while not denying that Ms. Morson was required to obtain physiotherapy treatment referred the Court to the Medical Report dated 14th June 2005 which indicates that Ms. Morson was discharged from the orthopaedic department, as an out patient, with effect from that date. The report indicated Ms. Morson was now "much better". She said the Defendant should not be held liable for loss of earnings after April 2005 when Ms. Morson could have and should have returned and sought to regain her old job. Ms. Thomas said that Ms. Morson was under a duty to mitigate her losses but instead chose to remain in

Antigua and Barbuda, apparently on extended vacation. She remained in Antigua and Barbuda some 5 months after she was medically certified as doing much better. Ms. Thomas says the Claimant's age is a factor which must have prevented her from obtaining employment.

Court's Findings and Analyses - Loss of Earnings

[60] Having reviewed Ms. Morson's evidence and perused the agreed documents, I am not all persuaded that at the time of the accident Mrs. Morson was employed as she seeks to have me believe. More importantly, I am of the respectful opinion that when Ms. Morson left the United States of America to come to Antigua and Barbuda she did so knowing full well that she was not returning to a job. I do not believe Ms. Morson when she said that she was due to return to Mrs. Lalli (her employer) in February 2005; if this were so and Ms. Morson realizing that this was an important aspect of her claim should have requested this information and Mrs. Lalli would have said so in her letter written in April 2005 or at least this information should have been requested from Mrs. Lalli since it was clear to Ms. Morson that the issue of her loss of earnings was a live one. Of greater significance, is the fact that Ms. Morson said that while she was in Antigua and Barbuda the person whom she was taking care of in the United States of America had died, I am therefore further buttressed in my view by this evidence.

[61] I therefore fail to see how Ms. Morson can properly claim loss of earnings for the entire period of time, in these circumstances. I also take into account Ms. Morson's own evidence that she was unable to obtain employment and I do not for one moment believe that this is as a consequence the injuries that she has sustained; in my respectful view it has to do with her advanced years.

[62] In any event, Ms. Morson has an obligation in view to mitigate her avoidable losses. In my opinion by July 2005, Ms. Morson was in a position to seek employment (based on the medical report provided to the Court) and ought to have sought employment. Ms. Morson has failed to mitigate her losses. Accordingly, I am of the view that she is only entitled to be compensated for loss of earnings from 15th February 2005 to 30th June 2005, that is a

period of 21 weeks and at a weekly rate of \$US200.00 this latter sum I consider to be reasonable in all of the circumstances. Using an exchange rate of \$2.70 EC to 1 US dollar. I therefore award Ms Morson the sum of \$5,671.00 damages for loss of earnings.

[63] Total special damages awarded to Ms Morson are the sum of \$10,498.10.

General Damages Claimant's Submissions

[64] Ms. Burnette stated quite correctly that the law on assessment of damages for personal injuries is well settled and is borne out in the case of **Cornelliac v St Louis 7 WIR 49** in which Wooding CJ as he then was when stated that "the Court must award fair and reasonable compensation having regard to the nature and extent of the injuries, the pain and suffering endured, loss of amenities, the impact on the Claimant's pecuniary prospects and the resulting physical disability." Ms. Burnette adverted the Court's attention to the evidence that Ms. Morson sustained severe injuries to her arm in the nature of a comminuted fracture at the union of the middle and lower thirds of the humerus, swelling of the arm and severe tenderness and bony crepitation and stiffness of the elbow. The medical report of Dr Benedict Owusu also stated that Ms. Morson was managed conservatively with a cast and was seen as an out patient. A progress report was issued on the 10th February, 2005 which confirmed that Ms. Morson required continuous treatment for at least two months. A report on 24th March, 2005 was also issued by the Rehabilitation Unit of the Holberton Hospital indicating that up to March, 2005, there was swelling and stiffness of the elbow. Ms. Morson's entire arm was placed in a cast and the hand and fingers were visibly swollen. It was her evidence in chief, when she amplified on her witness statement, that up to the date of trial, she still felt numbness in her arm and could not make a fist. She testified that the swelling had reduced but there remained stiffness in her arm especially in the mornings.

[65] Ms. Burnette posited that based on Ms. Morson's clear evidence of the pain she suffered, coupled with the fact that she still feels numbness in her hand and she could not play with her grandchildren, the Court should award Ms. Morson a global figure for general damages. Counsel referred to **Denise Sayers v Paul Boatswain, Civil Suit No 329 of**

2002 Grenada in which the Court awarded a Claimant who was 49 years old at the date of the accident EC\$36,000.00.

- [66] Ms. Burnette also urged the Court to award Ms. Morson general damages which included her loss of pecuniary prospect since Ms. Morson has testified that despite her best efforts she cannot find a job even though she has been looking for one. Counsel stated that Ms. Morson was 62 years old at the time of the accident and would have had a working life of 3 years. Ms. Burnette suggested that the Court utilize a multiplier of 3 and to multiply that by Ms. Morson's previous earnings of US\$360.00 per week. Ms. Burnette said that Ms. Morson's prospects of being employed were diminished both by her age and the effect of the injury. Ms. Morson therefore seeks general damages in the sum of \$50,000.00.

Defendant's Submissions

- [67] Ms. Thomas urged the Court not to award Ms. Morson general damages in excess of \$18,000.00 Ms. Thomas also referred the Court to the case of **Denise Sayers v Paul Boatswain** *ibid*. In that case the Claimant was 49 years old suffered injuries to her head and right hand as a result of being struck by the Defendant's vehicle. The Claimant spent one (1) week in hospital during which time she underwent surgery and a pin was placed in her arm and was there up to the date of trial. She was re-admitted to hospital and underwent further surgery and spent a further seven (7) days in hospital. The Claimant's injuries were listed as swelling of the forehead, abrasions to the forehead leaving scars, injury to the right elbow, injury to the right wrist, injury to fingers, severe comminuted fracture subluxation to the right elbow and head injuries. The medical evidence was that the Claimant would continue to experience pain in her elbow permanently and had a 50% chance of osteoarthritis developing in the joint over the next two (2) to three (3) years. Also she may require a total elbow replacement. The Claimant had to do physiotherapy every week since her discharge from the hospital. She could not make a fist. She still felt pain up to the date of trial although not as much as immediately after the accident. In its decision delivered in October 2003, the Court awarded the sum of \$36,000.00 as general damages.

[68] Ms. Thomas next referred the Court to another case, **Kariyma Abdul Lateef v. Michael Armstrong, High Court case No. 1991 of 0124**. The Claimant suffered injury to her right shoulder resulting from being hit by a motor vehicle. When further examined about three weeks after the accident, the lateral end of the clavicle was obviously prominent; there was gross shoulder deformity with a genuine step between the lateral end of the clavicle and the acromiom. There was much pain and tenderness. Plain x-rays of the right shoulder revealed a complete separation of the acromio-clavicular joint. Up to the date of the trial, four (4) years after, the Claimant was still in pain and had to massage the shoulder with liniment every night and it was still very painful to use her right arm to perform routine tasks. In a judgment delivered in April 2003 the Court awarded a total of \$14,000.00 for pain and suffering and loss of amenity.

[69] Ms. Thomas submitted that Ms. Morson's injuries (in the present case) were not as extreme as the injuries of the Claimant in the **Sayers** case and in fact are similar to those **Lateef** case.

Court's Analyses and Findings – General Damages

[70] In the Court's determination of what is the appropriate sum to be awarded to Ms. Morson as general damages, I have paid particular regard to her evidence in chief and that adduced in cross examination. In addition, I have had recourse to the medical reports which have been agreed. I have also given very deliberate and careful consideration to the submissions made by both Counsel.

[71] Based on the evidence led, there is agreement between the parties that Ms. Morson suffered a comminuted fracture of union of the middle and lower humerus and had to be hospitalized. The nature and extent of her injury is not in dispute. The point of divergence arises as to the nature and gravity of the resulting physical injury and also whether Ms. Morson has suffered loss of amenities and also the impact of the injury on Ms. Morson's pecuniary prospects.

- [72] The legal principles governing the assessment of damages were very ably referred to by both Counsel. The leading authority is indeed **Cornilliac v St Louis [1965] 7 WIR 491**. This was applied and followed in **Alphonso and Others v Deodat Ramnauth [1997] 56 WIR 183**.
- [73] The following represents my respectful opinion. While Ms. Morson has suffered a fracture, as mentioned above, her recovery as of June 2005 was much improved. I have not been presented with any medical evidence which indicates the present nature of her disability, if any, even though the report from the Rehabilitation Unit dated 2nd June 2005 indicates that she needed to continue therapy. There is no medical evidence to show that Ms. Morson has any permanent disability as a consequence of the injury quite apart from her own evidence about experiencing numbness and pain. On the aspect of pain and suffering, I am not persuaded that Ms. Morson is truthful as she should have been when she sought to give the impression that she is somewhat disabled as a result of the injury. I have no doubt that Ms. Morson experienced severe pain due to the fracture after which her hand was placed in a cast. However, I do not believe Ms. Morson when she said in cross examination that she was still experiencing pain. In her examination in chief Ms. Morson had stated that she experienced no pain, she later resiled from that position and said that she still feels pain and numbness in the hand. I am not at all persuaded that Ms. Morson still experiences pain as she would have the Court believe. This in no way negates the fact that she is entitled to be compensated for her pain and suffering during the injury and the months immediately after sustaining the injury.
- [75] In relation to her loss of amenities, Ms. Morson told the Court that she was unable to play with her grandchildren due to the injury she sustained. I accept that this may have been so for a period of months, particularly immediately after the accident and while her hand was in the cast.
- [76] In relation to impact on Ms. Morson's pecuniary prospect, I am not at all of the view that the injury affected Ms. Morson's pecuniary prospect. In my respectful opinion, her inability

to obtain employment has nothing to do with her injury but in my view only to do with her advanced age.

[77] Further, as stated earlier, I am of the view that when she left the United States of America for Antigua and Barbuda she had no intention to return to her old job and in any event the person whom she was taking care of in the United States of America died while she was in Antigua and Barbuda. She therefore would have needed to find alternative employment in any event. I must nevertheless award Ms. Morson general damages that adequately compensate her for her losses. I agree that she should be awarded a global figure.

[78] I have reviewed the submissions of both Counsel and I agree with Ms. Thomas that the injuries that the Claimant suffered in **Denise Sayers** *ibid* were more severe than those suffered by Ms. Morson and the treatment was more extreme. The injury suffered by Ms. Morson is not at the top end of the scale for such injuries. In the circumstances of this case, I am of the opinion that an award of general damages in the sum of \$20,000.00 is appropriate. I also accept Ms. Thomas submissions that the case of **Kariyma Abdul Lateef** is more instructive for the present purposes.

Interest

[79] An award of interest is made on the sum given as general damages from the date of the claim to the date of judgment. Interest is usually awarded on special damages from the date on which the cause of action accrued to the date of judgment at the rate of 2%

Conclusion

[80] In conclusion and for the above reasons, I give judgment for Ms. Sylvena Morson against Mr. Leron Lewis as follows:

General damages in the sum of \$20,000.00 with interest at the rate of 5% from the date of the Amended Claim to the date of judgment;

Special damages in the sum of \$10,498.00 with interest at the rate of 2% from the date of the accident to 24th December 2005 to the date of judgment.

[81] Prescribed costs, unless otherwise agreed

[82] I commend both Counsel for their industry.

Louise Esther Blenman
Resident High Court Judge