

**THE EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

IN THE HIGH COURT OF JUSTICE

**CLAIM NO. BVIHCV2013/153
(CIVIL)**

BETWEEN:

GARNA O'NEAL

Claimant

and

STEADROY MATTHEWS

Defendant

Before:

Ms. Agnes Actie

Master

Appearances:

Ms. Akilah Anderson for the claimant

Ms. Ruth Ann Richards the defendant

2015: October 10.
November 27

JUDGMENT

- [1] **ACTIE, M.:** Before the court is an application for assessment of damages arising out of a motor vehicular accident. The court at trial on 17th July 2014, adopted a consent order entered into by the parties for Judgment on admission of liability by the defendant with damages to be assessed.

Background

- [2] The claimant was 51 years at the time of the accident, a qualified registered nurse and acupuncturist, who normally resided and worked in the USA. She

had returned to Tortola her native land on a short vacation. On 14th June 2010, the claimant was crossing as a pedestrian at the junction of the James Walter Francis Drive and the entrance to the Moorings when she was struck by a large motor vehicle, commonly referred to as a "Safari Bus" owned and driven by the defendant. According to the claimant, the impact threw her to the ground on her right side while the truck continued driving running over her and dragging her. The defendant became aware that the claimant was under the bus after alarms were raised by onlookers. The defendant eventually stopped the bus after having dragged the claimant for several feet.

[3] The claimant was first taken to the intensive care unit at the Peebles Hospital in Tortola. Due to the seriousness of her injuries, she was airlifted on an emergency basis to Puerto Rico where she was hospitalized for a further 3 months with open wounds and several episodes of recurrent infection.

[4] The claimant's injuries were particularized in several medical reports as follows:

1. 8 broken ribs;
2. a collapsed lung
3. removal of her spleen;
4. laceration of her liver;
5. a broken right arm;
6. chipped tooth;
7. incontinence;
8. extensive burns and scarring on her abdomen and arms
9. scarring on her thighs due to removal of skin for skin grafts;
10. permanent titanium rods and plates in her arms.

General Damages

[5] The claimant having cited several authorities, seeks an award for general damages in the sum of \$100,000.00 for pain and suffering and loss of amenities. The claimant relies on the well-established principles laid down by Wooding CJ

in the seminal decision of **Corniliac v St. Louis**¹ namely (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 materially affected.

The Nature and extent of the injuries

- [6] The evidence in the witness statement and the medical reports revealed that the claimant suffered extensive injuries. The claimant was diagnosed as mildly hypotensive with multiple friction burns to the chest wall and anterior abdominal wall, as well as the right arm and forearm along with tissue loss, exposing fascia and muscles on the right arm. The claimant underwent surgery immediately on admission and was diagnosed as having suffered 8 broken ribs; a collapsed lung; removal of her spleen; liver laceration with collection of blood in the pelvis; a broken right arm; chipped tooth; incontinence; extensive burns and scarring on her abdomen and arms; and the claimant was placed into ICU on ventilation under blood transfusion. Following surgery the claimant continued to have a slow ooze of blood. The claimant was airlifted to Puerto Rico. While in Puerto Rico the claimant developed respiratory failure from lung contusion pneumonia. The claimant was fed through intubation which led to further infections.
- [7] The claimant was referred to the Burn Unit for the management of her deep open wounds. The medical report of Dr. Amin D Jaskille described the claimant as having several life threatening injuries with infection in the arm and non-healing wounds with bits of gravel deeply embedded in the wounds. The claimant underwent several surgical procedures to remove the foreign bodies from the wounds.

¹ (1964) 7 WIR 496.

The nature and extent of the resulting of the physical disability

- [8] The claimant now has permanent titanium rods and plates in her arms and continues to experience intermittent pain in her arms where the rods and plates are placed. She now has to wear long sleeved clothing to avoid exposure due to sensitivity to excessive sunlight. The doctor's report states that the removal of the claimant's spleen is associated with a decrease in the ability of the body to fight infections especially Pneumococcus which causes virulent pneumonia.

Pain and suffering

- [9] The claimant suffered multiple serious injuries as a result of the accident. On impact, she was dragged under the bus in the gravel and suffered friction burns to the overlying skin of her arm, upper anterior abdominal and chest. She stated in oral examination and her witness statement of the excruciating pain felt while being dragged under the bus. She underwent several surgical procedures to remove the gravel lodged in her arm as a result of sepsis and infections. She further states that the numerous incisions from the multiple surgical procedures exacerbated her pain and suffering. She also spoke of the fear of imminent death while being dragged under the bus.

Loss of amenities

- [10] Loss of amenities denotes the curtailment of the claimant's enjoyment of life by the inability to pursue activities pursued beforehand including loss of ability to pursue an enjoyable occupation.
- [11] The claimant states that her ability to practice as a qualified nurse and acupuncturist has been severely diminished as a result of the accident. She is physically unable to perform in the way she did pre-accident because her arms are now weak and deformed. The claimant states that she is now unable to provide care to her elderly mother for whom she had the responsibility to care over the years. The claimant states that she was unable to work at all for

three years when she returned from Puerto Rico and had to depend on the care provided by her daughter, friends and relatives.

[12] Both counsel for claimant and the defendant referred the court to authorities in an effort to determine quantum for general damages under this head.

[13] Counsel for the claimant avers that given the extensive nature of the claimant's injuries, there is a limited repository of closely comparable cases which would singularly reflect all, or most, of the injuries she has suffered. Counsel urged the court to take into account the composite of the claimant's multiple injuries and severity when making comparisons between authorities which may reflect only one, or a few, of the injuries she has suffered.

[14] The claimant cites the following authorities:

- (1) **Darrel Christopher v Benedicta Samuels**²:-In that case, an award of \$60,000 was made to the claimant a 44 year old who suffered spinal injuries and significant functional disability due to additional injuries sustained to his knees, ankles and left hand.

The claimant avers that in the injuries in the instant case are more extensive than Darrel Christopher who was hospitalized for one month compared to the claimant who was hospitalized for 3 months. Counsel states that whilst the claimant in Darrel Christopher suffered from a condition that caused diminished sensation to one side of the body and weakness to the other, it is noted that Ms. O'Neal's injuries have not just left her arms (her right arm in particular) permanently weak and disabled, but she has excessive scarring over her arms, torso and legs which is not just unsightly, but is photosensitive. The claimant urged the court to take into account that she has not made claims for future medical expenses, having deployed her medical training to help in her own recovery.

- (2) **Randy James v Leroy Lewis**³:-the court awarded \$130,000 EC (the equivalent of \$48,000 USD) to the claimant, a 35 year old male who suffered fractures to bones in his right forearm, facial injuries and damage to his knee ligaments. In that case the court took into account the discomfort, which the claimant experienced by virtue of recurring bouts of pain in the affected areas.

² BVIHCV2008/0183 delivered on 18 March 2010

³ ANUHCV2007/0403

Counsel is of the view that Ms O'Neal's injuries to her right arm are much more serious taken into account the discomfort associated with the insertion of permanent metal rods and plates.

- (3) **Cleos Billingsy v Anderson**⁴:- a 40 year old police officer was awarded the equivalent of \$40,000 USD for pain, suffering and loss of amenities on account of fractures to his left leg and elbow, fractures to his right thumb, and treatment which included placing a temporary external fixator on his arm.

Counsel is of the view that Ms O'Neal's injuries are more severe than that of **Cleos Billingsy's** considering the pain and discomfort of having to endure a permanent foreign object in her arm.

- (4) The claimant also relied on the UK Judicial College Guidelines in assisting the court to arrive at a reasonable quantum in relation to the nature of the injuries.

[15] The defendant on the other hand suggests an award in the range between \$45, 000.00 to \$65, 000.00 for pain and suffering and loss of amenities. The defendant in support refers the court to comparable cases from the jurisdiction and the United Kingdom as a guide. It is an accepted principle that the court should strive for a high measure of uniformity of awards as is reasonably practicable and should take guidance from comparable awards from within the jurisdiction with similar economic circumstances. The court should only take guidance from awards elsewhere and making appropriate adjustments as may be required having regard to our own prevailing conditions. In keeping with this principle, I took note of the authorities cited emanating from the jurisdiction namely:

- (1) **Travia Douglas v Shivoughn Warde et al**,⁵ the claimant 21 years old was injured in a car accident resulted in complete paraplegia from spinal injury possible secondary dislocation of C7 to T1, and many fractures of the right laminae. The claimant was an active young woman who enjoyed participating in sporting activities and socializing. The injuries

⁴ SVGHCV 2013/0096

⁵ SKBHCV 2008/0120, Judgment on July 6, 2011 and October 23, 2012

affected her sexual life and her ability to participate in sports or socialize as she did in the past. The Court in St. Kitts & Nevis awarded 270, 000.00 XCD (99, 337.97) for pain and suffering and loss of amenities.

(2) **Darrel Christopher v Benedicta Samuels dba Samuels Richardson and Co**,⁶ the claimant, a 44 year old plumber and competitive cyclist was involved in a road traffic accident which caused him physical and neurological damage. He suffered serious injuries and was hospitalized for one month. He suffered, a fractured tibia, an injury to his spinal cord at C4 level; wasting of the muscles; weakness in the upper and lower limbs and the trunk of his body; upper and lower neuron injury which impaired his coordination and movement. He was unable to carry on a normal, social or personal routine; could no longer engage in physical games, including his competitive cycling; and had become sexually impotent. The BVI court in 2010 awarded \$60,000 for pain and suffering and loss of amenities.

(3) **Leane Forbes v Ulbana Morillo**,⁷ the claimant, a 50 year old care-giver to a blind and diabetic person was involved in a road traffic accident. She sustained various contusions and experienced tenderness; muscular spasms in her cervical, thoracic and lumbo-sacral spine, posterior sub-ligamentous disc protrusion at the L5-S1 level; radial annulus tear posteriorly; adhesive capsulitis; and was adjudged to have an overall 19 % impairment. She was no longer able to perform her duties as a care-giver; and could not perform domestic tasks except with great discomfort. The Court upheld her award of 40, 000.00 for pain and suffering and loss of amenities.

⁶ BVIHCV 2008/0183,

⁷ BVIHCVAP 2005/0080

(4) **Denroy Baptiste v Tortola Yacht Services Ltd**,⁸ the claimant, a 42 year old boat painter was injured while working. The court found his injuries to include temporary loss of feeling; lesion to the right humeral head; labral tear in the right shoulder; radicular syndrome causing pain, paraesthesia's and weakness in the upper and lower extremities; dorsal and lumbosacral strain; compression fracture of T 12; mild compression fractures of L1 disc; bulging herniated discs at C4- C7, L4-L5 and L5-S; multiple levels of cervical and lumbar stenosis; tendonitis; traction injury to the brachial plexus. The court awarded \$45, 000.00 for pain and suffering and loss of amenities.

[16] I have reviewed the submissions and authorities relied on by both parties. In making the award for damages, I am reminded by the principles enunciated by Lord Hope of Craighead in the House of Lords in the case of **Wells v Wells**³ where he said:

"The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum, within the broad criterion of what is reasonable and in line with similar awards in comparable cases, as represents the court's best estimate of the plaintiff's general damages."

[17] The claimant seeks an award in the minimum sum of USD\$100,000 for pain, suffering and loss of amenities, considering the extensive and severe nature of the injuries and the lasting impact they will have on her quality of life. I am in agreement with counsel for the claimant that there is a limited repository of closely comparable cases which would singularly reflect all, or most, of the injuries suffered by the claimant. I conducted my own research and found the decision in **Heidi Binder v Patrick Mc Vey et al**⁹ emanating from this jurisdiction as a useful guide in determining the award under this head.

⁸ BVI HCV 2006/0130, Judgment delivered on January 29, April 24, 28; and May 28, 2008. The judgment was upheld on appeal

⁹ BVIHCV 2005/0006 decided 4th March 2008.

[18] The claimant in **Heidi Binder v Patrick Mc Vey** was injured in a boat collision on 1st January 2004. During New Year's celebrations on Jost Van Dyke, the claimant, her boyfriend and another friend were trying to get to their vessel. They solicited a ride from the defendant who was using his dinghy to voluntarily assist persons to find their respective vessels. A motor vessel, driven at an excessive speed, collided with the dinghy and all passengers (including the claimant) were thrown into the water. Her body was pulled under the vessel and through the propeller 3 times. She was struck on her right ankle, left pubic area and the right side of her head which caused her to lose consciousness for approximately 20 minutes. At Peebles Hospital, she was admitted and treated and on 3 January 2004, was transferred to Roy Lester Schneider Hospital in St. Thomas where she remained until 7th January 2004. Following her discharge, she was unable to work for 3 months as she was bedridden and confined to a wheelchair and thereafter placed on crutches.

[19] Ms. Binder's injuries were described as (i) concussive head injury; (ii) frequent headaches; (iii) 5 cm laceration to her head; (iv) 3 cm laceration to her right ankle; (v) soft tissue injury to left chest wall; (vi) chest pains and tenderness of chest wall; (vii) difficulty in breathing; (viii) fractured pelvis, spinal tenderness; and tenderness over left chest wall and inflammation of thoracic spine; (xviii) spinal trauma which has left her spine "curved"; (xix) chronic back pain; (xx) severe insomnia; (xxi) cognitive dysfunction; (xxii) chronic pelvic pain; (xxiii) discomfort urinating and (xxiv) sexual dysfunction. The medical reports reveal that the claimant received lacerations to her head, right ankle and her labia which left scars that caused her embarrassment. The scar on her head was not visible to the naked eye. The scar on her ankle was also barely visible. The court in 2008 awarded \$100,000.00 for pain and suffering and loss of amenities.

[20] I have considered the evidence and the authorities submitted by both parties and also took into account the injuries suffered in the **Heidi's** case. The injuries in

both cases were extremely serious in degree. However I note that the claimant in the instant case remained hospitalized for three months and was unable to work for three years in comparison to **Heidi** who was hospitalized for a few days, but was bedridden and unable to work for 3 months after the accident.

[21] The evidence before the court suggests that the claimant in the case at bar suffered severe life threatening injuries. The claimant described the excruciating pain suffered with the gravel entering her body while being dragged under the bus. She spoke of the shock and fear of imminent death while being dragged under the bus. I note the several surgical procedures, the extent of the pain and continuous infections suffered by the claimant and permanent titanium plates embedded in her hands. I also note the obvious sadness, humiliation and embarrassment caused by her disfigurement for not being able to expose her arm because of the extensive scarring.

[22] In making the award, I am guided by the decision in **Kathleen McNally v Eric Lotte and CITCO (BVI) Ltd** , Rawlins J. as he then was stated;

“The practice is to grant a global sum for general damages for pain and suffering and loss of amenities, considering these against the background of the nature and extent of the injuries sustained and the nature and gravity of the resulting impairment and physical disability.”

Accordingly, I accede to the claimant’s request for the sum of \$100,000.00 for pain and suffering and loss of amenities.

Pecuniary loss

[23] The claimant who was self-employed as an acupuncturist and nurse avers that she had several sources of income and a steady increase in her earnings, all related to her training and experience. The claimant asserts that right before the accident, she earned \$90,000.00 in 2009 from her nursing practice and \$150,000.00 from her acupuncture practice supplemented with other aspects of oriental medicine. The claimant in support produced her (IRS) income tax returns which shows her gross income in 2009 (the year before the accident) to

be \$108,987.00 before expenses. The claimant states that the receipts and documents to supplement the IRS form were all destroyed while in storage.

[24] Counsel states that the claimant was a vibrant and active 51 year old with every expectation to continue to earn well until an average retirement age of 65 years. The claimant suggests that the remaining 14 years be discounted for contingencies and vicissitudes of life and suggested a multiplier of no less than 10. In support, counsel cites the cases of **Allison Canai v Leonard Malzaire**¹⁰ and **Fraser v Dalrime et al**¹¹. The claimant also cites the case of **Franklyn Lloyd v Nathaniel Phillip** the court used a multiplier of 10, taking into account an average retirement age of 70 for the claimant who was a 57 year old medical doctor at the time of the accident.

[25] The defendant contends that future loss of earnings are only payable where a party's injuries prevent him or her from carrying out his or her former employment or has returned to employment but is working for pay at a lower rate. The defendant avers that there is no evidence before the court to indicate that the claimant will not be able to perform her occupation as an acupuncturist and nurse neither is there any evidence of an attempt to mitigate her loss and suggests a lower multiplier of 5. The defendant suggests an award of \$23,658.20 to be made on the net income of \$78,862.00 discounted by 30% to allow for the vicissitudes of life.

Analysis

[26] Pecuniary loss generally forms the principal head of damage in personal injury actions consisting primarily pre-trial earnings and prospective loss of earnings commonly called loss of future earnings. **McGregor on Damages 18th Edition**¹² states, "the function of the pecuniary heads of loss is to ensure that the claimant recovers, subject to the rules of remoteness and mitigation, full compensation for

¹⁰ Claim No. SLUHCV 200310821.

¹¹ Claim No. ANUHCV 2004/0513.

¹² at paragraph 35-056

the loss that he has suffered". The general method of assessment is the well-known multiplier/multiplicand method applied by taking the amount which the claimant has been prevented by injury from earning in the future (multiplicand) and multiplying it by the number of years during which he was expected to earn it (the multiplier). The multiplicand is calculated by using the figure of the claimant's present annual earnings less the amount he can now earn annually. The multiplier is discounted to take account of the fact that the claimant is being paid all of the earnings at once rather than over time as would ordinarily occur.

- [27] The objective of the courts in assessing compensation for a victim was stated by Lord Blackburn in **Livingstone v Rawyards Coal Company** as follows:

"I do not think there is any difference of opinion as to it being a general rule that, where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation."

- [28] I accept the claimant's IRS form as evidence of her earnings. Income tax returns are used to calculate taxes to be paid to the government and to disclose other information as required by the Inland Revenue Department. The form requires the tax payers to disclose their financial income status for the year in order to ascertain whether additional taxes are owed or whether the taxpayer is due for a refund. In an assessment of damages it is the claimant who is in the best position to give evidence as to her own career, earnings, future plans and the effect of the injuries on income. The detail required will vary with the gravity of the case. The evidence as contained in the witness statement and the medical report suggests that the claimant's livelihood as a nurse and acupuncturist has been severely affected as she requires the use of both hands to perform her job effectively. The evidence is silent as to whether her situation may improve in the future. The claimant other than stating that she has started a business since the accident and has resumed studies in law, has not provided any evidence of mitigation of her losses since her recovery.

[29] I am in agreement with the defendant's averment that the award under this head should be calculated on the net income of \$78,862.00, rather than on gross income as proposed by the claimant. The claimant in **Heidi Binder v Patrick Mc Vey et al**¹³ sought \$9,000 for loss of earnings for 3 months immediately following the accident. It was subsequently revealed that her gross salary was \$35,352 per annum and net salary after deductions was \$31,200 per annum. The court, using the net income, made an award of \$7800.00 for the 3 month period. In keeping with this authority, I make the award using the net income of \$78,862.00 as the multiplicand with a multiplier of 10.

[30] In an assessment for future loss of earnings, there are a number of uncertainties which makes the amount more imprecise. They include matters such as the claimant's future incapacity, prospects of obtaining employment and the normal hazards of life. It must be remembered 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 she would have earned during her normal working life but for the accident. The claimant indicates that she has resumed her studies in law. I am of the view that the claimant's new pursuit will provide her with some level of comfort coupled with any business that she may establish for the practice of her oriental medicine. Taking into account the vicissitudes and uncertainties of life and in keeping with the decision of **CCAA Limited v Julius Jeffery**¹⁴ I will discount the global amount by 20%. Accordingly, the award is $\$78,862.00 \times 10 - 20\%$ which is $\$788,620.00 - \$157,724 = \$630,896.00$. The claimant is granted an award in the sum of \$630,896.00 for loss of future earnings.

¹³ BVIHCV 2005/0006 decided 4th March 2008.

¹⁴ SVGHCAVAP 2013/10.

Special Damages

- [31] Special damages consist of out of pocket expenses and loss of earnings incurred down to the date of trial. The claimant pleaded special damages comprising of Lost Earnings in the sum of \$272,467.50 and Pre-trial Medical and Miscellaneous expenses in the sum of \$200,754.35.

Loss of earnings

- [34] The claimant pleaded special damages comprising of lost earnings in the sum of \$272,467.50. Loss of earnings is allowed as special damage for pecuniary loss suffered prior to the trial. **Mc Gregor on Damages**¹⁵ states
- “Where the precise amount of a particular item of damage has become clear before the trial, either because it has already occurred, and so become crystallised, or because it can be measured with complete accuracy, this exact loss must be pleaded as special damage. A prime example of this appears in personal injury cases, where earnings already lost and expenses already incurred before the action must be pleaded as special damage before proof of them maybe allowed”.

- [35] The claimant relies on the tax return forms to prove her earnings from June, 2010 to December 2013 for a period of 2 ½ years, making a total sum of \$272,467.50. I have already accepted the claimant's evidence of her net income of \$78,862.00 by 2 ½ years, thereby making a sum of \$197,155.00.00 for loss of earnings.

Pre-trial Medical and Miscellaneous expenses

- [36] The claimant claims the sum of \$200,754.35 for pre-trial medical and miscellaneous expenses. Counsel in her submissions states that the claimant's receipts detailed the costs incurred during her hospital stay in Puerto Rico. The sum includes costs of airfares, accommodation and meals for her daughters and friend who travelled from the BVI to render nursing and

¹⁵ Ch 49 49- 02

personal assistance to the claimant. The claimant also exhibited receipts which she alleges to be reasonable costs incurred such as roaming (telephone), food, medicine and intra as well as inter country travel.

Analysis

- [37] A claimant in a claim for particular losses must plead those losses as special damages. Those special damages as pleaded must be proved. The court notes that the claimant pleaded a global sum for \$200,754.35 for pre-trial medical and miscellaneous expenses. The amount pleaded was particularized in the submissions and the various witness statements. The court notes that in modern times, there is a tendency to adopt a more lenient approach and to allow a claim for special damage to be proved in witness statements and supporting documents provided that the existence of such a claim is clear from the statement of case. Barrow J in **East Caribbean Flour Mills Limited v Ormiston Ken Boyea** citing Lord Hope's reproduction and approval of the exposition by Lord Woolf MR in **McPhilemy v Times Newspapers Ltd** on the reduced need for extensive pleadings states

"now that witness s statements are required to be exchanged, should be seen as a clear statement that there is no difference in their Lordships' views on the role and requirements of pleadings. The position, as gathered from the observations of both their Lordships, is that the pleader makes allegations of facts in his pleadings. Those alleged facts are the case of the party. The pleadings should make clear the general nature of the case," in Lord Woolf's words, which again I emphasize. To let the other side know the case it has to meet and, therefore, to prevent surprise at the trial, the pleading must contain the particulars necessary to serve that purpose. But there is no longer a need for extensive pleadings, which I understand to mean pleadings with an extensive amount of particulars, because witness statements are intended to serve the requirement of providing details or particulars of the pleader's case"

[38] The defendant concedes the sum of \$168,772.39 as special damages and challenges the remaining sum of \$32,736. 96 by reason of the illegibility of the respective receipts and the uncertainty of the amounts claimed or double compensation. The claimant conceded on some of the items challenged by the defendant.

[39] The amounts challenged by the defendant consist mainly of invoices for air fares, ground transportation, accommodation, nursing care, grocery and other incidentals. In serious personal injury cases, items should be broken down into constituent parts such as costs of care by attendants, cost of gratuitous care etc. Such breakdowns are particularly useful in the event of an appeal.

[40] The costs of care for services provided by relatives and third parties are usually a separate head of damages allowed in personal injuries cases. In **Donnelly v Joyce**¹⁶ it was stated that:

“In an action for personal injuries in an accident, a plaintiff was entitled to claim damages in respect of services provided by a third party which were reasonably required by the plaintiff because of his physical needs directly attributable to the accident; the question whether the plaintiff was under a moral or contractual obligation to pay the third party for the services provided were irrelevant; the plaintiff's loss was the need for those services, the value which, for the purpose of ascertaining the amount of his loss, was the proper and reasonable cost of supporting the plaintiff's need.”

[41] I reviewed the invoices and considered the oral testimony and witness statements in support of the amounts claimed. I accept the evidence of the claimant in both oral and witness statements that she needed care and assistance during her hospitalization in Puerto Rico. I accept the invoices for the tickets, accommodation and incidentals for her daughters which were all dated during the period of the claimant's admission in Puerto Rico. I also accept the defendant's contention that some of the invoices appended were illegible,

¹⁶ (1973) ALL ER 475

uncertain and duplicitous. Having analysed the exhibits, I reject exhibits numbers 185-193, 195-214, 228-229, 234--242, 244-248, 250---256. Accordingly, an award in the sum of \$180,507.21 is made for pre-trial medical and miscellaneous expenses.

Order

[42] In summary and for the reasons and authorities cited above, I make the following order:

- (1) General damages for pain, suffering and loss of amenities in the sum of \$100,000.00 with interest at 5% from the date of filing the claim until the date of judgment.
- (2) Special damages
 - (1) Loss of earnings in the sum \$197,155.00.00
 - (2) Pre-trial medical and miscellaneous expenses \$180,507.21Total Special damages of \$377,662.21 minus the sum of 76, 335 already paid by the defendant totaling \$301, 327.21 with interest at the rate of 3% from the date of the judgment to the date of payment.
- (3) Loss of future earnings in the sum of \$630,896.00 with no interest before judgment.
- (4) Prescribed costs on the global sum in the sum of \$18,580.02 pursuant to CPR 65.5

[43] I wish to thank counsel for their submissions and authorities in support of this assessment.

Agnes Actie

Master