

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE  
(CIVIL)

SAINT LUCIA

SLUHCV2003/0849

BETWEEN:

(1) DANIEL DOYLE  
(2) NICHOLAS EARWAKER

Claimants

and

PETER MC FARLANE

Defendant

**Appearances:**

Mrs. Michelle Anthony-Desir for the Claimants  
Mr. Andie George for the Defendant.

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2018: March 5<sup>th</sup>

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**JUDGMENT**

[1] **WILKINSON J:** Mr. Doyle and Mr. Earwaker filed their claim form and statement of claim on November 5<sup>th</sup> 2003, alleging personal injuries due to the negligent driving of Mr. McFarlane. Mr. McFarlane in his acknowledgment of service indicated that he did not intend to defend the claim. Judgment in default of defence was applied for, entered and filed on May 28<sup>th</sup> 2004. It read as follows:

“No defence to the claim has been filed and that the time for so doing has expired. Judgment be and is hereby entered for the Claimants for an amount to be decided by the Court.

The Claimants are not yet in a position to prove the amount of the damages claimed.

The Claimants estimate that they will be able to do so within a period of 4 months.”

- [2] Since judgment was entered, the matter came up for hearing on 14 occasions over the course of the years but was adjourned either to await further medical reports, or to accommodate the Parties who had indicated to the Court that they were engaged in negotiations to settle the matter after the final affidavits exhibiting the last medical reports were filed on March 13<sup>th</sup> 2012. Even at that juncture the medical reports exhibited were of some vintage.
- [3] It is a fact that Mr. McFarlane’s insurance company, West Indies General Insurance Co. Ltd. between December 1<sup>st</sup> 2004 and January 28<sup>th</sup> 2009, paid to Mr. Doyle and Mr. Earwaker the total sum of \$620,923.00. The Company has stated that the sum paid out to Mr. Doyle and Mr. Earwaker is the maximum payable under Mr. McFarlane’s policy. The sum was shared equally and so each received \$310,461.50. All further payments are therefore for the sole account of Mr. McFarlane.

### **The Evidence**

- [4] On November 7<sup>th</sup> 2000, Mr. Doyle and Mr. Earwaker were passengers in Mr. McFarlane’s motor car registration number PC 5681. The motor car was being driven by Mr. McFarlane along the Castries - Vieux Fort Highway enroute to Vieux Fort. It was their last day of vacation.
- [5] In the vicinity of Fregate Bay in the Quarter of Dennery an accident occurred. Mr. McFarlane collided with a truck registration number TC601, owned by the company, American Drywall and which was being driven by Mr. Stanius Stanley. Mr. Stanley was travelling in the opposite direction to that of Mr. McFarlane.
- [6] As a result of the accident, both Mr. Doyle and Mr. Earwaker suffered serious life altering injuries, loss and damage.

**Mr. Daniel Doyle**

- [7] Mr. Doyle was born at London, England on August 6<sup>th</sup> 1960. At the date of the accident at Saint Lucia, November 7<sup>th</sup> 2000, he was 40 years of age. He suffered from no significant illness before the accident. He left school at age 16 years and went into the world of work. He worked consistently throughout the years. His first job was as a broker with Lloyds. In 1985, he was employed with Dial-A- Cab and he worked his way up the corporate structure to senior controller and whereby he was controller of about 2000 cabs. As controller he earned approximately £26,000. per annum. He left Dial-A-Cab at July 1999 and went to work with the company, Brunel Carriage, in a similar capacity as he had with Dial a Cab. Brunel Carriage is also a company which co-ordinates black taxi cabs at London.
- [8] At London, Mr. Doyle enjoyed his social life, golfed and was of friendly nature. He owned his own flat albeit that there was a mortgage on it.
- [9] Following the breakup of a long term relationship, he was upset. He quit his job with Brunel Carriage a few weeks before he travelled to Saint Lucia. According to him, he thought that he would travel on vacation to get away “from things”.
- [10] Mr. Doyle says that it was his intention on returning to London to resume working as amongst other things, he needed to work to pay the mortgage on his flat.
- [11] Following the accident Mr. Doyle was transported to the St. Jude Hospital in the Quarter of Vieux Fort. Upon arrival at the hospital, he was described by the attending doctor as being confused, disoriented and with disoriented speech. He had suffered (a) a deep laceration to the forehead, (b) fractures of the left clavicle, scapular and a comminuted fracture of the right frontal bone involving the frontal sinus, with air and fluid displacing the right frontal lobe. Secondary to the head injury he suffered chronic subdural haematoma with resulting cognitive impairment He was admitted to the surgical ward for further management. He underwent surgery to address his injuries.

- [12] On November 18<sup>th</sup> 2000, it being 11 days after admission to St. Jude Hospital, Mr. Doyle was discharged. He spent a further week at Saint Lucia recuperating.
- [13] Thereafter, due to the severity of his injuries, Mr. Doyle was transferred to the Royal London Hospital. A neurologist assessed him as having a “serious head injury” and he was also assessed as suffering psychological injuries.
- [14] Following his return to London, when discharged by the Royal London Hospital, Mr. Doyle was not capable of living on his own and looking after his needs. He moved into his parent’s home. From about November 2001 thru to July 2003, approximately eighteen (18) months after the accident, he remained there. During this time his mother did practically everything for him and which included cleaning, cooking, shopping and other basic chores. The first year he saw his mother and the rest of his family providing him with approximately six (6) hours a day of care and thereafter it was about two (2) hours per day. He received disability allowance.
- [15] Following the accident, he had no recollection of the accident. He was able to remember matters which occurred approximately one (1) week before the accident, and then matters from approximately one (1) week after the accident. His first recollection after the accident was that of seeing his mother and sister at Saint Lucia. Following his return to London, Mr. Doyle says that the year 2001, went by in ‘pretty much a blur’ and he spent most of the time at home. It was approximately one (1) year after the accident that he would venture outside of his parents’ house.
- [16] At February 20<sup>th</sup> 2007, Mr. Doyle filed a number of medical reports which were prepared at 2004. In summary it was noted that surgeries required were significantly delayed as Mr. Doyle waited out his time on a waiting list. One wait was in excess of 21/2 years. The reports recorded that Mr. Doyle has sustained significant head injury with an associated skull fracture, intracranial bleeding, injury

to his left clavicle and his nose. The fractured clavicle subsequently failed to unite/knit and warranted a bone grafting and stabilization procedure.

- [17] At June 21<sup>st</sup> 2004, while Mr. Doyle had significant improvement in the function of his shoulder, there was still some discomfort noted when heavy lifting and holding were involved and there was also left some terminal stiffness in the range of motion. It also affected his sleep. He was able to do a lot more including dressing himself, jobs around the house, and was even thinking of getting back to playing some golf.
- [18] Dr. Paul D. Lewis a consultant neuropathologist interviewed and examined Mr. Doyle on June 15<sup>th</sup> 2004. His mother, Mrs. Teresa Doyle was present at the examination.
- [19] According to Dr. Lewis, a major impact of the accident on Mr. Doyle was neurological and this is believed to have originated with the trauma to his head. There was memory loss for a period, change of character, cognition decline generally and behavioural problems. At 31/2 years after the accident, he was unable to work, had symptoms of neurological character, attributable to the accident and including impaired memory, impaired concentration, impaired mental arithmetic, alteration of mood, severe depression, headaches, vertigo and double vision. Little if any improvement in these symptoms was to be expected. He was considered to be severely disabled consequent to his post-accident symptoms. His present and future capacity for remunerated employment was severely reduced.
- [20] Dr. Read, a consultant psychiatrist stated that Mr. Doyle had undergone a change in personality and circumstances since the accident from being a relatively successful man to someone who has been unemployed since the accident and lived with his parents. The main reason for his reduction in circumstances was his phobic anxiety disorder – panic attacks with agoraphobia, although he also had symptoms of a specific phobia related to the proximity of cars. That he had

recurrent panic attacks when exposed to certain stressors. It was recognized that he organized most of his life around avoiding these stressors and limiting the occurrence of panic attacks.

[21] Dr. Read also described Mr. Doyle as having depressive symptoms. The diagnostic label of adjustment disorder with prolonged depressive reaction was more appropriate and reflected the change in his circumstance which have led to his depressed mood. It was highly likely that there was a degree of cognitive and organic impairment which although mild, subtle and not demonstrated by the cognitive tests that demonstrate grosser forms of defect, it would however increase his vulnerability to other psychiatric disorders, such as agoraphobia and adjustment disorder. It would make it more difficult for him to restore the balance of his life by taking initiative and he may have a mild dysexecutive syndrome, thus making it more difficult for him to multitask, tolerate stress and organize complex patterns of behaviour.

[22] In summing up, he said that he would estimate a 40 percent chance of no improvement following treatment, a 40 percent chance of some improvement following treatment but being unable to return to the workforce. He estimated a 10 percent prospect of improvement to the extent that he would be able to enter the workforce albeit with a significant residual symptom. The prospect of a full recovery is in the region of 2 percent.

[23] At March 13<sup>th</sup> 2012, Mr. Doyle filed a further affidavit and thereto he exhibited later medical reports from Dr. Tim Read and Dr. Paul Lewis.

[24] Dr. Read stated that he conducted a second interview with Mr. Doyle on July 10<sup>th</sup> 2009. At that time he observed that Mr. Doyle continued to suffer from some cognitive impairment relating to the accident in 2000. His cognitive impairment may have been exacerbated by a recent occipital infarct (vision complications due to a stroke) in 2008. He no longer suffered from a formal psychiatric disorder

such as agoraphobia or adjustment disorder for chronic depressed reaction. His anxiety symptoms seem to have improved steadily thru late 2006 to the point where he was driving increasing range and with confidence.

[25] Dr. Read noted that he had not returned to the workforce and clearly his cognitive state is such that it would be unrealistic for him to return to his pre-accident employment. Dr. Read did believe that he was capable of being rehabilitated to the workforce in a relatively low stress job and in an environment that was not complex. An example of such work, was work in a supermarket.

[26] Dr. Read concluded that it was regrettable that Mr. Doyle had not been afforded the cognitive behaviour therapy that he had recommended earlier.

[27] Dr. Read said that cognitive deficit and possible dysexecutive syndrome secondary to the brain injury would impair Mr. Doyle's ability to organize treatment and in such cases, a case manager was often helpful in overcoming this handicap by organizing treatment and making sure that treatment occurred.

[28] Dr. Read did not recommend any psychotropic medication at that visit.

[29] Dr. Paul Lewis also prepared a second report dated October 18<sup>th</sup> 2009, based on an interview conducted on October 15<sup>th</sup> 2009. This was an interview some 5 years on from his first interview with Mr. Doyle, He observed a number of findings by various other professionals in the intervening years.

[30] Dr Lewis' conclusions were that 9 years on from the accident, Mr. Doyle was still unable to return to work on account of symptoms of neurological character, and attributable to the accident. They included impaired memory and concentration, impaired mental arithmetic and excessive fatigue. Minor cognition changes had been noted on formal neuropsychological assessment and were evident on informal neurological assessment. He noted that Mr. Doyle had suffered significant

alteration of mood since the accident with anxiety and depression. The depression had resolved but the anxiety persisted.

[31] Dr. Lewis said that in his opinion, Mr. Doyle’s neurological symptoms consequent on brain injury sustained in the accident, resulted in very severe reduction of his present and future capacity for remunerated employment. Without partial visual loss caused by the stroke in 2008, the likelihood of his obtaining paid employment in the open market would have been very small. The effect of the stroke in 2008, was to further reduce his slender employment prospects. Employment assessment is nevertheless advised.

[32] Mr. Doyle’s special damages are uncontested. The Court having reviewed the documentary support and considerations for where there was no documentary support, for example home care by his mother, Mrs. Doyle, finds them reasonable and accepts them.

**DETAILS OF SPECIAL DAMAGES/ CONSEQUENTIAL LOSS OF MR. DOYLE**

Item	Description	Amount £	Amount EC\$
1.	<p><b><u>Hotel Accommodation</u></b>            Hotel accommodation, telephone calls and meals in Saint Lucia for 2 family members (Juliette’s Lodge)</p>	0.00	\$5,539.87
2.	<p><b><u>Airline Tickets</u></b>            Theresa Doyle (London – SLU) - £560.30            Carol Doyle (London – SLU) - £560.30            Theresa Doyle (SLU – London) - £1,802.80            Daniel Doyle (SLU – London) - £1,802.80</p>	£4,724.60	\$21,267.90



3.	<b><u>Medical Expenses</u></b>  Medical expenses in St. Lucia. EC\$11, 111.75 apportioned 50/50 between Mr. Doyle and Mr. Earwaker.	0.00	\$5,555.87
4.	Medical Reports at UK	£3662.50	\$16,481.25
5.	<b><u>Care Expenses</u></b>  i. Home care provided by Mrs. Doyle (mother) for approximately one (1) year after release from UK hospital at approximately 6 hours per day.  ii. Home care provided by Mrs. Doyle (mother) during year two (2) after release from UK hospital at approximately 2 hours per day. This continued until he started the rehabilitation course in July 2003.  A total number 3, 300 hours of care are claimed.  This is claimed at £5 per hour.	3,300 hour @ £5 per hour. £16,500.00	\$74,266.50
<b>TOTAL SPECIAL DAMAGES</b>			<b>EC\$123,111.39</b>

**Mr. Nicholas Earwaker**

[33] Mr. Earwaker was born on March 2<sup>nd</sup> 1955. At the date of the accident at Saint Lucia, November 7<sup>th</sup> 2000, he was 45 years of age. It is recorded by Mr. J.M. Wellwood, consultant surgeon that Mr. Earwaker had a number of illnesses prior to

the accident at Saint Lucia. There were peptic ulcers in 1997, and at this time it was recorded that he ingested approximately 56 units of alcohol per week and smoked 20 cigarette per day. He was also at July 2000, admitted to hospital with a spontaneous thrombosis of the right subclavian and was anti-coagulated using warfarin.

[34] Mr. Earwaker in his early 40s was self-employed in a fast food (jacket potato) business and had been so for approximately 14 years prior to 1996 when he sold his share in the business for £10.000 in order to care for his elder sister and then subsequently his mother. Both died in 1998. He did not resume any level of employment after their death and up to before the accident.

[35] Following the death of his mother and sister, Mr. Earwaker developed according to him, a degree of depression. His depression was compounded by the occurrence of a burglary and assault on him in 1999. As time passed he felt some level of improvement. He decided to take a vacation to Saint Lucia and on his return to make a fresh start.

[36] Following the accident, Mr. Earwaker was transported to the Saint Jude Hospital. He was admitted to the surgical ward. He was found to have suffered (a) a compound comminuted fracture of his right humerus, (b) three part intertranchantheric fracture of his right hip, (c) left pubis ramus fracture, (d) right radial nerve palsy, (e) abdominal pain to the left upper quadrant, (f) splenic and hepatic haematoma

[37] At the hospital he underwent surgery to address his injuries and remained hospitalized. 19 days later, on November 26<sup>th</sup> 2000, Mr. Earwaker was discharged from Saint Jude's Hospital. Given his medical state, he was transported by air ambulance to England and hospitalized at the Royal London Hospital for continued medical attention.

- [38] Mr. Earwaker remained hospitalized at the London hospital from November 26<sup>th</sup> 2000 until April 10<sup>th</sup> 2001. Mr. Earwaker's hospital treatment was complicated as there he underwent further surgeries and the original surgery on his right hip also failed. He developed a persistent MRSA infection in his right hip which led to him being put into isolation at the hospital. No further necessary surgery on his right hip was able to be carried out while he suffered with the MRSA infection.
- [39] After discharge he had to be re-admitted to the hospital on May 24<sup>th</sup> 2001. He was found to still be suffering from the persistent MRSA infection at his right hip. He had further surgery on his right hip and this surgery, surgical debridement of his right hip, resulted in a shortening of his right side by 6 cm. This surgery was followed with intensive physiotherapy. At discharge he was mobile with the assistance of a walking stick. At 2004, it was recommended that he have right hip replacement surgery. He subsequently had the hip replacement surgery.
- [40] When he first returned home after his hospitalization, his friend Mr. Andrew Wye moved in with him and provided assistance over a long protracted period. Other friends also provided assistance over a long period.
- [41] In addition to his acknowledged depression following the deaths of his mother and sister, the effects of the accident brought about further psychologically symptoms for Mr. Earwaker. He became depressed during his hospital stay on return to London. He was prescribed antidepressant medication. While living alone he would according to him get 'deeply down' and on one occasion "went into a black hole" and "decided not to be". He attempted to commit suicide by an overdose of painkiller medication and when that failed he cut his wrists and stabbed himself in his throat and stomach. He would have liked to have stabbed himself in his heart but did not have the strength to follow thru. Mr. Earwaker said that he wanted to die. He was hospitalized for his wounds and made a full physical recovery.

- [42] At September 14<sup>th</sup> 2004, Dr. Campbell, the consultant forensic psychiatrist, expressed the opinion that a relapse of Mr. Earwaker's severe depressive episode did not appear likely and that his suicide attempts appear to have been attributable ultimately to his involvement in the motor vehicle accident.
- [43] Dr. Campbell also said that it was likely that Mr. Earwaker would likely need continuing antidepressant medication at the therapeutic dosage and support from the Community Psychiatric Nursing Service. He may also need physical intervention arising from his harmful use of alcohol, although this was not recognized as a consequence of the accident.
- [44] Mr. Earwaker's latest medical report filed at March 13<sup>th</sup> 2012, was that of Mr. P. Earnshaw, consultant orthopaedic surgeon and dated April 23<sup>rd</sup> 2008. His report was prepared based on a visit with the consultant on February 8<sup>th</sup> 2007. Mr. Earwaker was just 1 month short of 52 years of age and it was 6 years and 21/2 month post the accident.
- [45] In his opinion and prognosis, Mr. Earnshaw said that Mr. Earwaker's condition had steadily improved since the time of the accident, and was now stabilized and the remaining symptoms should be considered permanent. The consultant accepted Mr. Earwaker being able to walk only a few hundred yard with the help of a walking stick,
- [46] The consultant also noted that Mr. Earwaker had problems using public transportation. This he said was realistic.
- [47] The consultant also noted that Mr. Earwaker needed several hours of home care. Again he said that this was realistic given Mr. Earwaker's restrictions.
- [48] In relation to employment Mr. Earnshaw said that noting (a) Mr. Earwaker's history of significant residual problems of an orthopaedic nature, (b) ongoing psycho-

emotional problems, (c) recent onset of cardiac problems; that it was extremely unlikely that Mr. Earwaker would ever return to gainful employment.

[50] Mr. Earwaker's special damages are uncontested. The Court having reviewed the documentary support and considerations for where there was no documentary support, for example home care by his friends, finds them reasonable and accepts them.

**DETAILS OF SPECIAL DAMAGES/ CONSEQUENTIAL LOSS OF MR. EARWAKER**

<b>Item</b>	<b>Description</b>	<b>Amount £</b>	<b>Amount EC\$</b>
1.	St. Jude Hospital – EC\$11, 111.75 apportioned 50/50 between the Mr. Doyle and Mr. Earwaker	0.00	\$5,555.87
2.	Air Ambulance from St. Lucia to UK Hospital	£3,233.40	\$14,550.30
3.	Land Ambulance transfer in the UK	£216.70	\$975.15
4.	Telephone Calls (UK to St. Lucia)	£524.97	\$2,362.37
5.	Carpet Installation	£800.00	\$3,600.00
6.	Walk-in Shower	£1,000.00	\$4,500.00
7.	Transportation	£300.00	\$1,350.00
8.	Medical Reports, GP Records Fee, Hospital Fees	£4211.25	\$18,950.62
9.	<b><u>Care Expenses</u></b>		

	<p>i. Home care provided by Ms. Rhiannon Bevan and 2 friends, Mr. Andrew Wye, and Mr. Nick Markiedes at approximately 2 hours per day from April 2001, to June 2001 and against at December 2001 until January 2002. They cooked, cleaned, shopped and provided transportation for him.</p> <p>ii. From March 2002, until Christmas 2002, Mr. Wye lived with Mr Earmaker providing home care at approximately 2 hours per day. From Christmas onward, home care was roughly about 1 hours per day.</p> <p>A total number of 1050 hours are claimed. This is claimed at £5 per hour.</p>	<p>1050 hours at £5.00 per hour £5,250.00</p>	<p>\$23,625.00</p>
<b>TOTAL CLAIM</b>			<b>EC\$75,469.31</b>

**The Law**

[49] An assessment of damages is conducted pursuant to **CPR 2000** Part 16. The Court has also to bear in mind Part 8, rules 8.7 and 8.9 which sets out the additional requirements with which Mr. Doyle and Mr. Earwaker must comply, their claims being in the nature of personal injury claims.

[50] An award of damages for personal injuries is made pursuant to the **Civil Code of the Revised Laws of Saint Lucia Cap.4.01** (“the **Civil Code**”) articles 985 and which provides:

“985. 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.”

[51] **Mc Gregor on Damages**<sup>1</sup> states that the object of an award of damages is:

“9. The object of an award of damages is to give the plaintiff compensation for the damage, loss or injury he has suffered. The heads or elements of damage recognized as such by the law are divisible into two main groups; pecuniary and non-pecuniary loss. The former comprises all financial and material loss incurred, such as loss of business profits or expenses of medical treatment. The latter comprises all losses which do not represent an inroad upon a person’s financial or material assets, such as physical pain or injury to feelings. The former being a money loss is capable of being arithmetically calculated in money, even though the calculation must sometimes be a rough one where there are difficulties of proof. The latter however is not so calculable. Money is not awarded as a replacement for other money, but as a substitute for that which is generally more important than money; it is the best that a court can do.

10. The statement of the general rule from which one must always start in resolving a problem as to the measure of damages, a rule equally applicable to tort and contract, has its origin in the speech of Lord Blackburn in *Livingstone v. Rawyards Coal Co.*<sup>2</sup> He there defined the measure of damages as “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.” This statement has been consistently referred to or cited with approval, or restated in similar language.”

[52] On the matter of special damages, the law has long recognized and expanded the categories of matters that can reasonably be assessed and made awards. The authorities of **Suit No. 210/1995 (St. Lucia) Colleta Lucas v. Remy Greaves** and **Donnelly v. Joyce [1974] Q.B. 454** demonstrate this.

[53] When considering an award of general damages, the locus classicus remains **Cornilliac v. St. Louis (1965) 7 WIR 491**. Therein, Wooding CJ at p. 494 said that on an assessment of a general damages the heads under which the assessment

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<sup>1</sup> 15<sup>th</sup> edition para.9 page [7] and [8]

<sup>2</sup> (1880) 5 App. Cas..

should be determined ought to include (a) the injuries inflicted and the loss or impairment of his functional capacity before making such recovery as he has; (b) the physical disabilities which he will have to bear for the rest of his life, (c) the pain and suffering he had to endure, (d) the loss of amenities of which he has been deprived, and (e) the loss of pecuniary prospects in respect both of his employment and of his retirement benefits.

[54] In regard to Mr. Doyle and the considerations of **Cornilliac** identified as (a) to (d), the Court has also looked at the authorities **Gopaul v. Walker**<sup>3</sup>, **Mitchell v. Quested**<sup>4</sup>, **DeGannes v. Seecharan**<sup>5</sup>, **Battoo v. Levitt**<sup>6</sup>, **Augustin Tate v. Ricky Plante**<sup>7</sup> and **Botana v. De La Cruz**<sup>8</sup>.

[55] In regard to Mr. Earwaker and the considerations of **Cornilliac** identified as (a) to (d), the Court has also looked at the authorities **Sealy v Stewart**<sup>9</sup>, **Sherma Mathurin v. Rain Forest Sky Rides**<sup>10</sup>, **Dr. Wezenet Tewedros v. Dr. Genendra Malik and Dr. Sangita Malik**<sup>11</sup> and **Heidi Binder v. Patrick McVey**<sup>12</sup>.

[56] In regard to both Mr. Doyle and Mr. Earwaker, the consideration of **Cornilliac** identified as (e), the Court reviewed the authorities presented in addition to the latest decision delivered on January 16<sup>th</sup> 2018, from our Court of Appeal – **BVIHCVAP2015/0019 Steadroy Matthews v. Garna O’Neal**. Therein Michel JA said:

“[38] The multiplicand is the net annual amount which the injured party would have been earning but for her injuries, less any amount which she is capable of earning in the future. Where the injured party is in salaried

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<sup>3</sup> 5218/86 & 5372/88 The Lawyer 4.3 page 50 Trinidad.

<sup>4</sup> 2157/69 Daly’s Damages p. 37

<sup>5</sup> Trinidad S185/70 judgment 8/5/71

<sup>6</sup> Trinidad CA93/78 judgment 8/5/80

<sup>7</sup> Saint Lucia Suit No.571/2001

<sup>8</sup> Kemp & Kemp C2-051

<sup>9</sup> Daly’s on Damages p.85 – referred to in Tewodros v. Malik et al

<sup>10</sup> SLUHCV2008/0551

<sup>11</sup> SLUHCV2009/0764

<sup>12</sup> BVIHCV2005/0006



employment and is rendered completely incapable of working by the injury, the calculation of a multiplicand is fairly easy. Where, however, as in the present case, the injured party was self-employed and is capable of doing some amount of income-earning, the calculation of the multiplicand is fairly difficult. The calculation, however, is a factual determination to be made by the finder of fact, which in this case is the master who undertook the assessment of damages.

[39] ....

[40] The multiplier is the amount by which the net annual income should be multiplied in order to arrive at the quantum of the award for loss of future earnings. This is determined by ascertaining the number of years which the injured party would have been earning that income but for her injuries. According to McGregor on Damages<sup>13</sup>, '(t)he starting point in the calculation of the multiplier is the number of years that it is anticipated the claimant's disability will last; the calculation falls to be made from the date of trial.'

[41] In the case of **Pritchard v. J.H Cobden**<sup>14</sup>, the English Court of Appeal held that damages for loss of earnings for a living claimant should be assessed as special damages for the earnings loss between injury and trial, with a calculation of the future loss earnings from trial by selecting a multiplier from the date of trial to compensate the claimant for the likely loss of earnings for his future working life ....

[42] In the seminal case of **Alphonso v. Ramnath**, this Court – having reviewed the principles to be applied in determining the multiplier to be used in assessing loss of future earnings in personal injury claims, and having considered comparable awards – adjusted a multiplier of 15 set by the High Court and substituted of 12 in arriving at the award to be made for loss of earnings to a 45 year old man with an anticipated working life of 20 years between trial and retirement. Adopting the mathematics of Satrohan Singh JA, who delivered the principal judgment in the Court of Appeal, the multiplier of 7.74 should be discounted by 40% and yield a discounted multiplier (rounded to the nearest decimal point) of 4.6.

[43] ...

[49] In the case of **Blamire v. South Cumbria Health Authority**<sup>15</sup> the English Court of Appeal held that the trial judge was entitled to reject the multiplier-multiplicand approach in assessing the injured party's future loss of earnings, given the number of uncertainties in that case as to the

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<sup>13</sup> See para. 38-100 19<sup>th</sup> ed.(2014)

<sup>14</sup> [1988]Fam.22

<sup>15</sup> [1993] PIQR; [1992] Lexis Citation 2222

amount of the injured party would have earned if she had not been injured, as well as the likely future pattern of her earnings. The judge accordingly decided, and the Court of Appeal upheld his decision, to award a global sum for loss of future earnings.” (My emphasis)

### **Findings and Conclusion**

- [57] The Court believes that it would not be overreaching to say that the impact of the accident has undoubtedly changed the lives of Mr. Doyle and Mr. Earwaker forever. The pain, suffering and anguish both physical and mental over a very long protracted period is evident from their affidavits and medical reports.
- [58] At 2012, it was 12 years on from the year of the accident, the year of the filing of their final affidavits, their lives continued to be very much impacted by the accident. According to the medical reports there was going to be no near return to their state of health or life pre the accident.
- [59] Starting with the special damages, the Court accepts both sets of special damages as being reasonable in all the circumstances.
- [60] In regard to special damages award for Mr. Doyle, the Court having reviewed his affidavits and supporting documents is prepared to award him the sum of \$123,111.39.
- [62] There can be no award for loss of income since Mr. Doyle was not employed at the time of the accident.
- [63] In regard to the award of general damages for the considerations identified as (a) to (d) of **Cornilliac**, the Court is prepared to award Mr. Doyle the sum of \$175,000.00.
- [64] In regard to the award for loss of future earnings, the Court is prepared to adopt the **Blamire** approach because Mr. Doyle was not working at the time of the

accident and there was no evidence of any contract or promise of employment if he had ordinarily returned from Saint Lucia.

[65] Further, Mr. Doyle said that before quitting his job with Brunel Carriage, he worked for a similar salary as he had when employed with Dial-A-Cab. He fixed this salary at approximately £26,000.00 before taxes. Mr. Doyle did not provide any documentation to support his statement on salary, qualifications or experience in relation to any type of job. Bearing in mind the burden fixed by **CPR 2000** rule 8.7 on Mr. Doyle, it was important for Mr. Doyle to provide such disclosure if he wanted his former salary, experience and so forth to be considered by the Court. Without the disclosure, the Court's hands are somewhat tied and the Court cannot simply adopt this sum as his prior annual earnings in any measurement.

[66] Under normal circumstances this loss and award would be measured using a multiplier and multiplicand from trial to approximate retirement. That would put the measurement start at date when judgment was entered – May 28<sup>th</sup> 2004, at this time he was 44 years old with an approximate remaining working life of about 21 years.

[67] The medical evidence is that by 2009, Mr. Doyle was more than likely never to revert to his earlier level of cognition, concentration. Any job that he might be able to do, would have to be of the simplest nature. The consultant suggested that such work could be work in a supermarket.

[68] There being no multiplicand, the Court will use the **Blamire** approach and award a global sum of £50,000. For loss of future income.

[69] In regard to special damages award for Mr. Earwaker, the Court having reviewed his affidavits and supporting documents is prepared to award him the sum of \$75,352.44.

- [70] There can be no award for loss of income since Mr. Earwaker was not employed at the time of the accident.
- [71] In regard to the award of general damages for the considerations identified as (a) to (d) of **Cornilliac**, the Court is prepared to award Mr. Earwaker \$150,000.00.
- [72] In regard to the award for loss of future earnings, the Court is prepared to adopt the **Blamire** approach because Mr. Earwaker was not working at the time of the accident and there was no evidence of any contract or promise of employment if he had ordinarily returned from Saint Lucia.
- [73] Further, Mr. Earwaker had ceased employment approximately 2 years before the accident, albeit to look after his sister and mother, but even then, 1 year after his mother's death, he had still not returned to work. He sold his business interest for £10,000.
- [74] Mr. Earwaker, like Mr. Doyle also failed to disclose any information about his former salary, experience and so forth. So once again, the Courts hand are tied.
- [75] As stated prior, under normal circumstances this loss of future income and award would be measured from judgment to approximate retirement. That would put the measurement start at date when judgment was entered – May 28<sup>th</sup> 2004, at this time he was 48 ½ years old with an approximate remaining working life of about 16 1/2 years.
- [76] The medical evidence is that by 2009, Mr. Earwaker would likely need to be maintained on a therapeutic dosage of antidepressant medication, as to his physical injuries, by 2007, symptoms at this time were to be considered permanent – impaired walking, only able to walk a few hundred yards at a time aided by a walking stick. He was also going to continue to need assisted home care.

According to the consultants, it was not likely that he would ever be able to return to gainful employment.

[77] There being no multiplicand, the Court will use the **Blamire** approach and award a global sum of £45,000. for loss of future earnings.

[78] **Court's Order:**

1. Mr. Doyle is awarded \$123,111.39 in special damages.
2. Mr. Doyle is awarded \$175,000.00 in general damages.
3. Mr. Doyle is awarded £50,000. for loss of future income.
4. Mr. Earwaker is awarded \$75,352.44 in special damages.
5. Mr. Earwaker is awarded 150,000.00 in general damages.
6. Mr. Earwaker is awarded £45,000. for loss of future income.
7. Each of the total awards to Mr. Doyle and to Mr. Earwaker is to be on payment adjusted by deduction of \$310,461.50 from each, this being the payment by Mr. McFarlane's insurance company, West Indies General Insurance Co. Ltd. to each of them.
8. Interest is awarded at the rate of 6 percent on all sums with interest on general damages being from date of service of the claim and on other awards from date of judgment until payment in full.
9. Prescribed costs.

**Rosalyn E. Wilkinson  
High Court Judge**

**By the Court**

**Registrar**