THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2012/0292

BETWEEN

[1] SIMONE SPARMAN

Claimant

and

[1] JOLLY BEACH RESORT & SPA

Defendant

Appearances:-
Lawrence Daniels, Daniels Phillips & Associates for the Claimant
Kendrickson H. Kentish, Lake & Kentish for the Defendant

....
2018: November 13,
December 4
....

JUDGMENT

*(Employment law -employ**er'**s duty to maintain a safe environment in the workplace - employee injured due to wet floor - whether employer breached duty)*
(Quantum of damages- Personal Injuries- back injuries)

[1] Joseph Olivetti J (Ag.): For several years Jolly Beach Resort & Spa enjoyed the services of a cook, Simone Sparman. This is no longer so as on or about June 12, 2011 Ms. Sparman had an accident in her workplace due to a wet surface and suffered injuries. Now she no longer cooks for her former employer or for anyone else for that matter for her livelihood. She is before the Court claiming damages for personal injuries due to **breach of her employers' duty to maintain a safe working environment.** She filed her claim on 24th April, 2012. Her employers, Jolly Beach Resort & Spa **("Jolly Beach")** deny any liability. They say in their Defence that they were not negligent, that she did not fall as she claims but that she began to slide and prevented a fall by holding on to her co-worker and that they do erect signs warning of a wet surface as and when necessary.

[2] The trial was short although the Court was called upon to consider both liability and damages. This was so as no case management direction had been given for a split trial and counsel seemed happy to proceed on that basis.

[3] Ms. Sparman gave evidence and relied on the medical reports referred in her witness statement which reports had been disclosed and formed part of the trial bundles. She called no other witness. Learned counsel for Ms. Sparman, Mr. Daniels indicated at the outset of the trial when asked by Mr. Kentish, learned counsel for Jolly Beach Resort & Spa "Jolly Beach" that he did not intend to call Dr. Bedaysie from whom he had obtained a witness statement as the doctor resided in Trinidad and Tobago and Ms. Sparman did not have the means to meet his expenses to bring him here. He also accepted, correctly, that he could not rely on Dr. Bedaysie's witness statement.

[4] Jolly Beach called two witnesses, Ms. Gail Daniel-Otto, Jolly Beach's Human Resources Manager and Mr. Randy Honore,a co-worker of Ms. Sparman who was on duty on the relevant evening.

Findings of Facts relating to Liability

[5] Ms. Simone Sparman, up until the time of the accident on or about 12 June 2011 giving rise to this claim, was employed as a cook by Jolly Beach at its hotel premises at Bolans, St. Mary's Antigua. In fact, she had worked for some years in that capacity prior to the accident. On or about the evening of 12 June,2011 during the course of her employment Ms. Sparman when she was entering the kitchen slipped on a wet floor and fell. This happened in the corridor at the entrance to the kitchen of the Bocciolo Restaurant. She was 6 months, 2 weeks pregnant and aged about 35 at the time.

[6] There was a dispute as to whether she fell or just slipped. Ms. Sparman said she slipped and fell. Ms. Sparman was vigorously cross-examined on this but maintained that she slipped and fell. Mr. Randy Honore, on the other hand, said he was walking in front of her along the corridor and that she slid and held on to a nearby shelf. Mr. Honore was not cross- examined as to his version of how the accident occurred.

[7] After considering all the evidence including the fact that Mr. Honore was not cross- examined on his version I accepted Ms. Sparman's version, that is, that she slipped on the wet floor and fell. She struck the Court as a witness of truth; Mr. Honore being in front was unlikely to see exactly what had transpired and, as Mr. Kentish put to Ms. Sparman and which she admitted, being pregnant she was not so athletic at the time.

Further, Mr. Honore's shelves did not feature in the pleaded Defence at all. Jolly Beach stated in their Defence (Trial Bundle (TB) Pleadings p.19 para. 5) - "while entering the Defendant's kitchen at the Bocciolo restaurant the Claimant began to slide but prevented a fall by holding on to her co- worker Mr. Randy Honore." Emphasis added. It does not allude to her holding on to any shelf. And, Ms. Gail Daniel-Otto, could not assist on this as she repeated what was pleaded at para 5 of the Defence in her witness statement (T B Witness Statements p.35 para. 4) as something which had been reported to her. She was not a witness to the accident and indeed she was not at work when it occurred.

[8] Mr. Kentish taxed Ms. Sparman with the medical report of Dr. Mathew-Anthony dated 7th September 2011(TB **Claimant's Docs** p.9) which refers to her slipping, but she was not swayed. The maker of that report did not give that statement under oath and was not the first medical officer to have seen Ms.Sparman.In the like vein the Court notes in the same trial bundle at p. 17 the medical report of Dr. Bedaysie dated 27 January 2012 which refers to a fall.

[9] In any event, whether one chooses to term it a slip or a slide which ended in a fall or just a slip and that she broke her fall somehow, the Court finds that Ms. Sparman had an accident because the floor was wet and further that as a result of that accident she suffered injuries. The Court also finds that there were no signs in the area warning of a wet floor at the time. And although Ms. Daniel-Otto tried valiantly to assist by testifying that signs were placed throughout the premises warning of wet surfaces as and when necessary she was not at work that evening as she readily admitted and could not speak to any such signs having been placed in the corridor or entrance to the kitchen prior to the accident that evening. Mr. Honore who was at work in his evidence in chief gave no testimony about the presence or lack thereof of warning signs or to the condition of the floor that evening. A curious omission on the part of Jolly Beach whose witness he was.

Did Jolly Beach Breach its Duty to Ms. Sparman to Provide a Safe Working Environment?

[10] Learned counsel for Jolly Beach submitted in essence that Jolly Beach as her employers were not in breach of any of their obligations to Ms. Sparman, that they were not negligent and that it was for Ms. Sparman to prove where the water came from, how long it remained there, what kind of floor it was etc. I find the final part of that submission untenable. Ms. Sparman having proved that the floor was wet, the evidential onus shifted to Jolly Beach to show that it was not wet or that the floor was slippage proof or that Ms. Sparman herself spilled the water or that they had taken precautions to warn employees that the floor in the corridor was wet and to beware of the danger of slipping.

[11] Mr. Kentish cited At**iyah's** Accidents, Compensation and the Law 6th edn p.29.The learned author accepts that negligence means failure to take that degree of care which was reasonable in all the circumstances of the case or failure to act as a reasonable person would have acted. However, the learned author goes on to posit whether the Court should consider the reasonable person as black, coloured or white,Muslim, Christian etc.

[12] I do not find that discourse helpful here. The concept of a reasonable person has never been linked to colour or creed *per se*. **It all depends on the circumstances of the case. It is the law's fiction** - the man on the Clapham omnibus - interpreted to be the reasonable human, man or woman in his specific calling or station in life : whether medical practitioner, soldier, hotelier, driver. In short, the standard of care required is what the court considers should be the reasonable standard in all the circumstances.

[13] Mr. Kentish also relied on Vinnyey v Star Paper Mills Ltd[1] in support of his contention that Jolly Beach was not liable. This case concerned a workman called to clean a floor made slippery by a viscous non-dangerous fluid and who was given equipment and instructions as to how to go about his task. Loaded pallets were stored in the room. He slipped on the floor and was injured whilst trying to move a pallet with the aid of a forklift before he had used his squeegee on the soiled area. His claim was rejected as it was held that there was no reasonably foreseeable risk that a workman brought to clean up and given equipment and instructions in such circumstances would slip. This case is readily distinguishable on its facts from the case at Bar.

[14] In addition, learned counsel for Jolly Beach made submissions on contributory negligence although that was not pleaded. Counsel cited Redman v Samuel[2] in support of his contention that a defendant to an action in negligence is not required to plead contributory negligence to be able to rely on it.

[15] Although I did not see contributory negligence arising here either on the pleadings or on the evidence, the Court must deal with that submission as clearly counsel put much store by it.

[16] On reading Redman, a case from the jurisdiction of Trinidad and Tobago, it is clear that the learned judge cited no authority to support that proposition. However, it is well established that contributory

[1] [1966]1 ALL E R 175
[2] TT 2009 HC 177

negligence must be specifically pleaded to be relied on. See Margaret Blackburn v James Bristol[3] Baptiste JA at p.18 para 28[4].

[17] And, in Fookes v Slaytor, [5] the English Court of Appeal held unequivocally that the defence of contributory negligence was only available if it was pleaded. See also Kemp & Kemp The Quantum of Damages (2006) Vol.1 para. 7-011 p. 7005. It follows "like the night the day" that the Court cannot accept Mr. Kentish's submission that a litigant is not required to plead contributory negligence to be able to rely on it as a correct proposition of law. I now turn to the submissions made on behalf of Ms. Sparman.

[18] Learned counsel for Ms. Sparman, submitted that Jolly Beach were negligent in that they breached their obligations to Ms. Sparman as enumerated in the particulars of negligence para. 16 of the Statement of Claim, TB (Pleadings) p.9 - and that their negligence caused the accident and resulting injuries. He cited Gloria Lake v Antigua Commercial Bank, [6] judgment of Blenman J., as she then was, on damages dated June 28, 2006. (Mr. Kentish readily pointed out that it was just the judgment on assessment of damages). No doubt Mr. Daniels thought it might be useful nonetheless as it was a case of negligence due to a slippage in her place of employment in which the claimant succeeded.

[19] The Court therefore considered the judgment of Mitchell J., as he then was, dated 1st April 2004 on liability in Gloria Lake. Ms. Lake slipped and fell when she walked into a puddle of water on a bathroom floor at her employer's premises and suffered injuries. She certainly was not called upon to say where the water had come from etc. It is indeed surprising that defending counsel here who appeared for the successful litigant there should make these submissions now about Ms. Sparman's failure to prove where the water came from etc.

The Law on an employer's obligations in the workplace

[20] I can do no better than to reiterate Mitchell J.'s summation of an employer's duty at common law at paragraph 6 of Gloria Lake -

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3 GDAHCVAP2012/0019

4 The issue of contributory negligence can be disposed of quickly. As Mr. Haynes, QC stated, it is the law that contributory negligence should be specifically pleaded. The difficulty Mrs. Blackburn faces is that she did not plead contributory negligence on Mr. Bristol's part. Unsurprisingly, in his oral submissions, Mr. Delzin indicated that Mrs. Blackburn was not relying on contributory negligence

5 [1979] 1ALL ER 0137

6 ANUHCV1999/0123

> "**The** duty of care owed by an employer to his employees is well settled. It is to take reasonable care in all the circumstances of the case not to expose the employee to unnecessary risk. For convenience this duty is often split up into different categories such as safe tools, safe place of work and safe system of work. But it always remains one general duty. The duty of the employer is to take reasonable care in regard to the particular employee and all of the circumstances relevant to that employee must be taken into consideration. So far as slips and falls are concerned, it has long been established that it is the duty of occupier of premises to see that the floors are kept clean and free from all spillages so that accidents do not occur. Damage suffered by a plaintiff will be held to have been caused **by the defendant's** negligence if the plaintiff proves on a balance of probabilities or by reasonable inference that the negligence substantially contributed to the damages or the risk or danger thereof."

[21] I have come to the conclusion having regard to the law including both the burden and standard of proof and to my factual findings that on a balance of probabilities Ms. Sparman has established that the injuries she suffered were attributable to the accident and that the accident occurred because Jolly Beach were negligent in that they breached their obligations at common law to ensure a safe working environment. Therefore, breaches have been established as per Statement of Claim paras. 16 (c) (d) (e) and (f).

[22] It was reasonably foreseeable by the management of Jolly Beach that if there was a wet floor in the entrance leading to the kitchen that a member of staff might step on the wet floor and subsequently slip or fall, in particular a heavily pregnant employee like Ms. Sparman was at the time and that they should take reasonable steps to prevent such an occurrence. I consider also Mr. **Honore's evidence that the restaurant was open** that night and that there were several workers on duty in both the dining room and kitchen. Therefore, one can reasonably infer from that that Jolly Beach could have reasonably foreseen the frequent use of the passage that evening by staff including the pregnant Ms. Sparman and that it was important to keep that area clean and free from any hazards. They failed to do so or even to warn employees of that danger. Accordingly, Jolly Beach is wholly liable for the accident and for any consequential loss and damage arising therefrom to Ms. Sparman. I now turn to the question of damages.

Damages

[23] The law in this field is well settled. In Cornilliac v St Louis [7] the leading authority, Wooding CJ set out the matters to be looked at in assessing general damages:-

a) the nature and extent of the injuries sustained ;
b) the nature and gravity of the resulting physical disability;
c) the pain and suffering experienced;
d) the loss of amenities if any, and
e) the extent to which pecuniary prospects are affected.

[24] And the court is mindful that the object of an assessment of damages in cases of this nature is to arrive as nearly as possible to that sum of money that 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. See Lord Blackburn in Livingstone v Rawyards Coal Company [8] at 39 as referred to in Kemp & Kemp op.cit. para 1-004 p. 1004.

[25] And further, Heeralall v Hack Bros.[9] makes it clear beyond argument that the award must be fair, fair to the claimant for what has happened to her through the negligence of the defendant and fair for the defendant to pay for such negligence. Such damages cannot be perfect compensation, but it will be fair compensation for the injuries and for the social, economic and domestic consequences.

What injury, loss and damage has Ms. Sparman suffered?

[26] I glean the following from her witness statement and the medical reports referred to therein in particular that of Dr. Matthew-Anthony (TB Claimants documents p9). I find that Ms. Sparman is suffering from pains in her lower back, right hip and lower limb, pains in her spine due initially to sacroiliitis/sprain with L5-S1 disc bulge and sensory paresthesia which progressed to mild discal dehydration with mild annular bulge of L4-L5 spine and to her current state - L4-5 L5/S1 radiculopathy sensation reflex and power loss in the lower limbs. Surgery to relieve her condition was recommended as long ago as January 2012 but unfortunately, Ms. Sparman did not

[7] **(1965) 7 WIR 491,**
[8] (1880) 5 App. Cas. 25
[9] (1977) 15 WIR 117,

have the means to enable her to undergo that treatment and to date she has not had that remedial surgery.

[27] A brief medical history is apposite. Ms. Sparman was initially seen after the accident at the Mount St. John Medical Centre (**"MSJMC")**.There she was hospitalized and placed on bed rest and on discharge given two weeks sick leave. No CT scan was done at the time in order to avoid any risk to the fetus.

[28] On or about 18th June 2011 she returned to the MSJMC with complaints of pains to her right hip and lower limb and Dr Mansoor referred her to the orthopedic department. Dr. Gaekwad, the orthopedic consultant saw her. He made a clinical diagnosis of right sacroiliitis/sprain with L5-S1 disc bulge and sensory paresthesia (L5) with no motor deficit. She was 26 weeks 4 days pregnant. She was treated with analgesics and advised absolute bed. Due to the gestational age of the fetus radiological/imaging studies were deferred. She was reviewed two days later and found to be clinically asymptomatic. She was advised absolute bed rest until end term pregnancy and the hospital gave her a follow up appointment for out- patients clinic.

[29] On 30th June 2011 Ms. Sparman returned to the outpatients department of MSJMC. The said report of Dr. Matthew-Anthony states- " **… on 30**-6-2011 the patient was seen in orthopedic out-patient clinic in severe lower back pain after being non-compliant regarding the advised bed rest**."** She was diagnosed with L4-L5 disc protrusion and right lumbo-column radiculopathy. She was readmitted, given analgesics and bi-lateral skin traction was applied. On 15 July 2011 MRI findings showed **–** " mild discal dehydration with mild annular bulge of L4-L5 spine**"**.

[30] Ms. Sparman showed marked improvement during her hospital stay and on 20 July 2011 she was deemed fit for discharge with absolute bed rest at home plus oral analgesics. The discharge sheet appended to Dr. Matthew-**Anthony's** report shows the treatment received**,** "**skin traction**" and itemized the medication administered: "Panadol,Voltarin,Heparin, BCo**"**. And the follow up instructions stated **–** "absolute rest-no bending, no twisting, no lifting of weights." And it also listed the prescriptions given **–** "Panadol, 500 mg po tds x2/52 Voltaren 75 mg po PRN (severe pain).**"** all indicative of severe pain.

[31] Ms. Sparman was seen again on 18 August, 2011 and found to be in a stable condition with complaints of mild lower back on lateral movements. She had to continue oral analgesics and follow

-up at outpatients in 6 weeks. It appears that subsequently labour had to be induced and that she had a safe delivery.

[32] However, **Ms. Sparman's** back pain did not get better and finally she was referred to a specialist, Dr. Bedaysie at Medical Surgical Associates, Woods Center St Johns. He saw her on 27 January 2012. In his report dated 27 January 2012 and referred to in her witness statement Dr.Bedaysie confirmed that she suffered from L4-5 L5/S1 radiculopathy sensation reflex and power loss in the lower limbs. He recommended immediate need of decompressive surgery to relieve symptoms and prevent further progression. He gave the costs of surgery for her condition at the time as EC$39,510.00.

[33] The Court accepts Ms. Sparman's evidence that she continues to experience severe back pain and that she has not been able to work as a cook since the accident as she can no longer stand for prolonged periods and that she is impaired when it comes to doing her household chores for which she now requires help.

[34] Mr. Kentish sought to establish from the statement in the report of Dr. Matthew-Anthony referred to above that Ms. Sparman's condition was aggravated by her non-compliance with the recommendation of absolute bed rest, and he cross -examined Ms. Sparman on this. Ms. Sparman denied that she was non-compliant. She testified that she only got up to go to the bathroom and that even then, she was assisted.

[35] I accept her evidence because as I said before she impressed me as a witness of truth and her evidence is credible. I accept that she did leave her bed to go to the bathroom and I also take into account that frequent micturition is a well-documented symptom of pregnancy. Having regard to her back injury her doctors might very well have regarded her getting up to go to the bathroom as her being non-compliant with their recommendation of absolute bed rest. One even wonders whether absolute bed rest at home is ever possible with no helpful nurses proffering bed pans on tap.

[36] In any event, if Jolly Beach wanted to establish that she had failed to mitigate her losses then in my view they would have had to go much further to show that what the doctors regarded as non-compliance were unreasonable acts or omissions undertaken by Ms. Sparman which aggravated her injuries. Jolly Beach have not done that.

[37] The law on mitigation is well established.

"The claimant is only required to act reasonably. Whether he has done so is a question of fact not law. The burden of proving that the claimant has acted unreasonably lies on the defendant**"**. Kemp & Kemp op.cit. para 6-002 p. 6002.

[38] Reference also the Privy Council`s judgment Geest v Monica Lansiquot [10]- **"**the law will give the benefit of any doubt to the claimant who has been placed in a position of embarrassment or difficulty by the defendant**'s** breaches of contract or tort. " Emphasis added. And Geest laid down that the defendant must plead the acts on which he relies to establish failure to mitigate. Glasgow M .(as he then was) in Myers v Dickenson Bay Hotel Management Ltd dba Sandals Antigua, referred to later, adverted to and applied those Geest principles.

[39] Having regard to all the evidence on this issue and to the law I find that the accident was the substantial cause of all Ms. Sparman`s injuries and that there was no intervening act or acts by Ms. Sparman which can be considered so unreasonable as to break the chain of causation or to have aggravated her injuries to such an extent that one could say that had she not acted like that or omitted to act like that she would not have suffered those injuries. Now to quantum.

General Damages.

[40] The Court considers that Ms. **Sparman's injuries are** serious and that she has endured and continues to endure much pain and suffering and loss of amenities. In addition, having to be confined to bed for several weeks to await the birth of her child clearly impacted on her enjoyment of life even if that factor was not emphasized in Mr. **Daniel's submissions.** Neither counsel submitted any authorities on quantum, a superlative statement of confidence, perhaps, in the ability of the court, but nonetheless a most unhelpful one. However, the Court, mindful of the practice to consider comparative cases from the same jurisdiction as far as possible in determining an award for general damages, adverted to two cases from this jurisdiction which were useful.

[41] The first is Myers v Dickenson Bay Hotel Management Ltd dba Sandals Antigua[11]: Ms. Myers, a waitress slipped and fell on the wet floor of the walk-in refrigerator at work. She suffered in the main from L4/5 broad disc herniation with severe degeneration of the L4/L5 disc. Surgery was recommended for a L4-L5 discectomy and fusion. She was unable to work and was released from her employment. She was diagnosed with a '"permanent partial disability of seven percent (7%) for her degenerate L4-L5 disc**"**. Unlike this case she gave cogent evidence of significant loss of amenities including her inability to engage in sports that she had enjoyed prior to the accident and of her degeneration after the accident. She also testified that she was unable to carry

[10] [2002] UKPC 48
[11] ANUHCV 2013/0231

on many of her normal daily activities without assistance. She was awarded $95,000.00 as general damages. This judgment was handed down by Glasgow. M on Oct 6th 2016.

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[42] The other is Anita Tobitt v Grand Royal Antiguan Beach Resort Limited and Stanford Frederick,[12] judgment on assessment of damages of Master Mathurin (as she then was) dated October 13, 2010. Ms. **Tobitt was diagnosed with "prolapse of lumbar inter**-vertebral disc/lumbo-sacral disc with diminished sensation in the dermatome distribution of L5-**S1" which** was found to be consistent with central and left lateral disc herniation at L5/S1 with impingement of the thecal sac. She was diagnosed with 8% permanent disability and the prognosis was that she may require surgery in the future to maintain her current level of abilities and will develop post traumatic degenerative joint disease as she grew older which would increase the percentage of the permanent physical impairments in future. Ms. Tobitt was awarded $50,000.00 for general damages. That was eight years ago.

[43] The injuries suffered by Ms. Sparman can be considered serious, surgery has been recommended, she was hospitalized twice, had to be confined to bed for several weeks to await the birth of her child, suffered pain sometimes severe and is still under a serious disability. Her condition is such that she can no longer work in her former employment or perform her usual duties in her home where she resides with her partner and young family. Unfortunately, we have no definitive report on whether she will suffer from any permanent disability after the recommended surgery.

[44] In all the circumstances, the Court considers an award of $65,000,000.00 as fair and reasonable compensation. General damages in that sum is therefore awarded with interest at 5 % from date the Claim was served to judgment. I now turn to her claim for future medical expenses.

Future medical expenses

[45] **Ms. Sparman's** evidence as to the need for and the costs of future surgery was not challenged and is accepted as it was buttressed by the report she referred to in her witness statement which was before the court. The court accepts this and awards her the sum of EC$39,510.00.The court is aware that that was a 2012 estimate and that costs have not remained static but we have no current estimate. No interest is payable before judgment on this item. I now turn to her claim for special damages which must be specifically pleaded and strictly proved.

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[12] ANUHCV2006/0026

Loss of earnings prior to the accident.

[48] At the time of the accident Ms. Sparman was earning a salary of $1,400.00 per fortnight. She did not put in any salary slips. However, Jolly Beach as her employer was in a unique position to refute her testimony on this but chose not to do so. In these circumstances despite the absence of documentary evidence, I find that she has established her loss in that amount from April 2012 when as Ms. Daniel-Otto' testified Jolly Beach ceased to pay her. It strikes me that to hold otherwise would be unconscionable and an affront to justice as unlike the majority of personal injury cases the defendant here was the claimant`s employer at the time, and so can be taken to have had full knowledge of her earnings.

[49] Ms. Sparman also claimed "points" but did not provide any amount or supporting documentation on this aspect to enable the Court to quantify her loss.

[49] Ms. Sparman was employed at the date of the accident and is entitled to an award of special damages to represent earnings lost as a result of the injury from the date Jolly Beach stopped paying her (April,2012) to the date of judgment. This, the court computes as EC$221,200.00.This award is to bear interest at 3% per annum from service of claim on 30th April 2012 to judgment.

Washing machine

[51] Ms. Sparman claimed expenses for a washing machine. However, she did not tender any documentary proof of that purchase. Although the Court accepts that she did buy one because she was no longer able to do her household chores as before, the Court cannot speculate as to the amount she expended as such a purchase is ordinarily accompanied by a receipt or other document evidencing the purchase, and the court has no idea of going rates and cannot speculate. Accordingly, this claim is disallowed.

Travel Expenses

[52] I accept that Ms. Sparman made several visits to and from the hospital and medical clinics and had to incur travel expenses. She claimed $300.00 and continuing but she did not submit any bills. The Court however takes into account that one is unlikely to get receipts for taxi fares. The sum claimed of $300.00 is eminently reasonable and the Court will award her that amount with interest at 3% per annum from service of the claim on 30th April 2012 to judgment.

Medical Reports.

[53] The full claim for costs of the various medical reports of $1400.00 is disallowed as receipts for same ought to have been available and produced. However, there can be no doubt that medical reports were obtained, several were produced, and ordinarily such reports ,it is well known, come at a cost.

[54] The Court accepts the guidance given on this in McGregor on Damages, para 10-004 - "Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence **is not given".** And in Alex Losik v Eldean Henry[13] per Henry J .-**"**Though the expense under this head was not supported by documents, it is not one which normally is, the need for help was established and evidence given as to the expenses incurred and it is the duty of the Court **to recognize it by an award that is not out of scale"**.[14]

[55] The court will therefore award her $1000.00 with interest at 3% per annum from service of the claim to judgment.

Domestic help/ deprivation of housekeeping capacity

[56] Ms. **Sparman's** evidence that she hired domestic help as she was unable to do her housework because of her injuries is credible having regard to the extent of her injuries. The need for household help both past and continuing is established and so too the costs - 2 days per week at $100.00 per day. (Ref. TB. Witness Statement p.13 para. 20) Ms. Sparman did not provide any documentary proof of this on-going expenditure but the Court notes that it is not usual to obtain receipts from domestic helpers and the rate falls within current scales for household help and is not unreasonable. In addition it is reasonably foreseeable that Ms. Sparman will continue post-trial to need such help until she is able to have the recommended surgery. The amount expended or claimed as at the date that the claim was issued was EC $5600.00 and it was made clear that it was a continuing expense.

[58] The Court found the learning at Kemp & Kemp op.cit p.17004 para 17-006 under the heading - deprivation of housekeeping capacity- instructive :-

> **"As with the loss of ability to do DIY or other services it is permissible to** look at the commercial cost of providing the lost services. This is so when

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[13] Alex Losik v Eldean Henry ANUHCV2009/068

[14] Greer v Alstons Engineering Sales and Services Ltd- [2003] UKPC 46

commercial help will not in fact be engaged. Daly v General Steam Navigation Company Ltd.[15] The measure is to take the cost of employing someone else to do the work which the claimant has been in the past and will be in the future incapacitated from doing. The court rejected that this method is only permissible if another person had in fact been so employed **in the past and would in future be so employed in the future".**

[59] An award under this head is called for and it would be a manifest injustice to deprive Ms. Sparman of compensation in this respect. The court thinks it best to split the award by giving an award to reflect the costs of domestic help from the accident to trial and then to make an award to reflect the need and cost of future domestic help as the latter, being a future loss, will not attract pre- judgment interest.

[60] Accordingly, in relation to post accident to trial expenses for domestic help the Court makes an award of $72,000.00 (7 years and 6 months or 360 weeks at $200.00 per week) with interest at 3% per annum from the service of the claim to judgment.

[61] And, in respect of the post-trial help, viewed as a reasonably foreseeable future loss, I consider that continuing domestic help at the said rate for 6 months reasonable as within that time it is hoped that if put in funds Ms. Sparman would be able to have the recommended operation and be restored to substantially her former position in terms of her health, although in the absence of a current medical report and in view of the nature of the injuries that is highly debatable. I therefore award her the sum of $4,800.00.

Costs

[62] Having succeeded at trial it follows that Ms. Sparman is entitled to the costs of this action which fall to be determined under CPR 65 Appendix B.

Summary

[63] To sum up, for the foregoing reasons, I find that Jolly Beach is liable for the accident and must compensate Ms. Sparman for the injuries she sustained as a result of the accident. Accordingly, I give judgment for Ms. Sparman and award her compensation as follows:

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[15] **1979 1Lloyds rep.257**

1) General damages of $65,000.00 with pre-judgment interest from the date the claim was served on 30th April 2012 to date of judgment at 5% per annum;

2) Loss of earnings of EC$221,200.00 with interest at 3% per annum from service of claim to judgment;

3) Costs of domestic help $72,000.00 (7 years and 6 months or 388 weeks at $200.00 per week) with interest at 3% per annum from the service of the claim to judgment;

4) Costs of medical reports $1000.00 with interest at 3% per annum from service of claim to judgment;

5) Travel expenses of $300.00 with interest at 3% per annum from service of claim to judgment;

6) Future housekeeping costs of $4,800.00;

7) Future medical costs of EC$39,510.00;

5) Prescribed Costs on the global award in accordance with CPR 65 Appendix B.

Rita Joseph-Olivetti
High Court Judge(Ag.)

By the Court

Registrar