

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

SLUHCV2016/0622

BETWEEN:

MARTIN WILLIE
ST. CLAIR AUGUSTIN

Claimants

and

(1) CHERVY OLIVIERE
(2) JONATHAN HUNTER ALIAS DIDI
(3) EMMON JOHN
(4) CURT
(5) BRIAN OLIVIERE
(6) JUSTUS LEO AKA TIBO
(7) CHOW
(8) CARLO
(9) SIOBHAN
(10) ARNOLD

Defendants

BEFORE: Her Ladyship, the Honourable Justice Kimberly Cenac-Phulgence
(A JUDGE IN CHAMBERS)

APPEARANCES: Ms. Natalie Da Breo of Counsel for the Claimant
Ms. Algitha Richelieu of Counsel for the 2nd and 6th
Defendants, Jonathan Hunter aka Didi and Justus Leo aka
Tibo

PRESENT: Chervy Oliviere, Jonathan Hunter alias Didi, Emmon John and
Carlo

2019: February 14, 25.

DECISION ON ASSESSMENT OF DAMAGES

[1] CENAC-PHULGENCE J: Judgment in default was entered against defendants nos. 1,2,3,5,6 and 8 dated 1st February 2017 for an amount to be decided by the Court. The claim arose as a result of an incident which took place on 13th

October 2013 and for which the claimants filed this claim for personal injuries arising from battery by the defendants.

- [2] The claimants filed an application for assessment on 12th February 2018 and the Court gave directions for the assessment of damages on 19th June 2018. By Order dated 17th December 2018, the assessment was adjourned to 14th February 2019. Defendants 1, 2 and 3 were present at Court when the adjourned date was given and the Court ordered that the other defendants be served with notice of the hearing.
- [3] No witness statements were filed by any of the defendants. The 2nd defendant filed submissions on 8th February 2019. Evidence of service of the date of the hearing of assessment on defendants 5, 6 and 8 was presented by way of an affidavit of service filed on 14th February 2019.
- [4] The Court is charged with assessing special as well as general damages in relation to both claimants. I will deal with each of the claimants separately.
- [5] In assessing general damages, I am guided by the well-known case of *Cornilliac v St. Louis*¹ which sets out the considerations which must be borne in mind by the court when assessing general damages. Those considerations are:
- (a) the nature and extent of the injuries sustained;
 - (b) the nature and gravity of the resulting physical disability
 - (c) the loss of amenities, if any; and
 - (d) the extent to which, consequentially, pecuniary prospects are affected.
- [6] In the case of *Wells v Wells*,² Lord Hope of Craighead observed as follows:
- “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.”** (my emphasis)

¹ (1965) 7 WIR 491.

² [1998] 3 All ER 481 at 507.

[7] The approach is therefore to look at comparable cases in making an assessment of damages. In the United Kingdom, the Judicial Studies Board has provided guidelines to assist in the assessment of damages and achieving a measure of consistency in awards in personal injuries claims. While these guidelines are not binding on this Court, they provide useful considerations which can assist in determining the amount to award in relation to various types of injuries. More recently, the Eastern Caribbean Supreme Court Personal Injury Cases Digest 2000-2017 compiled through the Impact Justice Project has provided a useful compendium of cases from our Courts to assist in the assessment process.

Claimant No. 1-Mr. Martin Willie

Evidence

[8] **Mr. Martin Willie ('Mr. Willie')** filed a witness statement on 12th February 2018. The evidence reveals that Mr. Willie was 32 at the time of incident and is now 37 years old. His evidence in relation to his injuries is supported by a medical report of Dr. Danny Frederick, Senior House Officer at the Department of Orthopaedics of Victoria Hospital dated 6th February 2014. The report of Dr. Frederick reveals the following injuries in relation to Mr. Willie, (a) deep laceration transecting nasal bone, nose avulsed; (b) deep laceration transecting the left quadriceps femoral tendon with an open complete fracture of the left patella (superior edge avulsed); (c) mutilated 3rd and 4th right fingers; (d) deep tangential, incisional laceration to palmar aspect of right hand causing near complete mutilation of right hand; (e) deep lacerations to left leg, proximal-middle 1/3, lateral aspect with open fracture to the left fibula and partial transaction to the left gastrocnemius muscle.

[9] Mr. Willie was hospitalized at Victoria Hospital as an inpatient and discharged on 4th November 2013. Treatment for his injuries included resuscitation, stabilization, surgical treatment for the following: repair of muscles and tendons; formal amputation of the right hand as limb salvage was attempted but not possible, intensive care treatment, mechanical ventilation, a plaster of Paris cast placed on left leg and left hand, analgesics and injury therapy for an

extended period of time. **Mr. Willie's evidence is that he** continues to suffer pain and that he has at least nine scars on his body as a result of the incident.

[10] Mr. Willie also relies on the medical reports of Dr. Naomi Jn. Baptiste, Consultant Psychiatrist at the Mental Wellness Center dated 9th August 2016 and 13th April 2017. The reports reveal that as a result of attack, Mr. Willie suffered from auditory hallucinations, grandiose delusions, and frequent re-experience of the traumatic experience. He was diagnosed with Post Traumatic Stress Disorder with Psychotic Symptoms.

[11] The report also states that he continues to suffer from mental anguish and to receive regular treatment at the Mental Wellness outpatient clinic and has to be medicated at nights. At his last review on 11th April 2017, Dr. Jn. Baptiste states in her report that Mr. Willie was stable, with no psychotic features and her recommendation was that he continue to attend the outpatient clinic for follow-up care. The report also suggests that Mr. Willie is generally maintained well on antipsychotic medication.

Assessment in relation to Mr. Willie

Special Damages

A. Medical expenses:

[12] Mr. Willie claims a total of \$3,445.00 for hospital fees and the cost of one medical report in his statement of claim at a cost of \$50.00. However, in written submissions Mr. Willie spoke to two reports to which Ms. Alghitha **Richelieu ("Ms. Richelieu") objected**. Ms. Natalie **Da Breo ("Ms. Da Breo")** conceded that the evidence only supports payment for one medical report.

Analysis

[13] Having reviewed the receipts presented in support of this claim, I find that the amount of \$3,445.05 has been proven which includes the cost of one medical report and I so award.

B. Loss of income

- [14] Mr. Willie claims the sum of \$108,000.00 as loss of income for the period 13th October 2013 to 13th October 2016 at a monthly income of \$3,000.00. Mr. Willie's **evidence is that he** worked in the construction sector doing carpentry, joinery, steel bending and later supervisory work, amongst other things. He is now unable to work as a construction worker because of the loss of his right hand as he is right-handed and no longer able to use tools such as a hammer. He is unable to bear the rigours of work.
- [15] In his witness statement, he says that at the time of the incident he was employed at Hy-bert Construction and exhibits his salary slips for work done at Bella Rosa and ECFH-BOSL sites for the period 10th December 2013 to 10th March 2014. He says he worked every weekday and some weekends and earned \$150.00 daily. By his estimate he would have lost 4 and ½ years in regular work of at least \$145,500.00, calculated up to the date of the claim.
- [16] He says he worked elsewhere for \$150 - \$200 depending on the task and employer but does not provide any details as to how frequently he did such work and how many such jobs he did on average in a week. He also speaks of working independently in his spare time and earning an annual income of \$6,000.00 in the field of construction and estimates for the 4 1/2 years a loss of \$24,500.00. Again, no details of such engagements are provided.
- [17] Mr. Peter Albert in his witness statement says he employed Mr. Willie at the time he lost his right hand. He says they had just completed a retaining wall and were on the verge of completing two other projects. He confirms that Mr. Willie worked as a carpenter and also did a little steel bending and joinery and supervision at times. He says when Mr. Willie was not working with him he is aware that he would work elsewhere in the construction sector but does not say where. Mr. Albert says Mr. Willie has not been employed since October 2013.
- [18] Ms. Richelieu submitted that the amount claimed for loss of income was being objected to as Mr. Willie had failed to produce a formal letter from Hy-bert

Construction to establish how often he was employed with that company. She also submitted that the witness statement of Mr. Peter Albert failed to establish his relation with Hy-bert Construction. The salary slips which Mr. Willie presented she submitted do not support his evidence that he earned \$3,000.00 monthly and do not show that he was consistently employed or earned a steady income. In relation to Mr. **Willie's claim for loss of income for independent contracts**, Ms. Richelieu objected to such a claim. Ms. Richelieu suggested that in the circumstances a nominal award could be made relying on the case of David Balcombe v Vaughn Lowman³ but that deductions would have to be made for NIC and income tax in keeping with the case of Peterson Cheddi v Regis Martyr et al.⁴

- [19] Ms. Da Breo submitted that the evidence presented was sufficient to establish **Mr. Willie's claim. She urged the Court to consider that Mr.** Willie only presented some of his salary slips to support his contention that he made \$150.00 per day and that it was not intended to support his contention that he worked five days a week.

Analysis

- [20] Loss of earnings is calculated on the basis of net income. Having looked at the evidence, Mr. Willie did not work five days a week all the time. The salary slip shows that Mr. Willie was employed for \$150.00 daily or \$18.75 per hour but it does not show that he worked every day contrary to what he says. If he had worked every day, he would have clocked 80 hours fortnightly or 160 hours monthly. The evidence shows the following in relation to the hours Mr. Willie worked:

10th Dec. 2013-23rd Dec. 2013 - 68 hrs.

31st Dec. 2012-13th Jan. 2013 - 8 hrs.

14th Jan. 2013-27th Jan. 2013 - 19 hrs.

28th Jan. 2013-10th Feb. 2013 - 80 hrs.

11th Feb. 2013-24th Feb. 2013 - 64 hrs.

25th Feb. 2013-10th Mar. 2013 - 40 hrs.

³ SVGHCV2006/0375, delivered 7th May 2012, unreported.

⁴ SLUHCV1996/0715, delivered 29th January 2004, unreported.

[21] Based on the evidence it shows that Mr. Willie on average earned \$1,500.00 per month. He never clocked 160 hours for any of the monthly periods. The salary slip does not show any deduction for NIC and tax. I rely on the dicta of Edwards J in the Peterson Cheddi case at paragraph 45 where the learned judge said:

“Even though loss of earnings is always calculated on the basis of net earnings, there is no evidence from Mr. Cheddi concerning income tax payments or any other statutory deductions. Concerning this omission, I am mindful of the dictum of Ronald Luckoo JA in Heyliger vs Lakeram Deokaran (unreported) cited in Bibi Shamina and another vs Sampat Dyal and others (1993) 50 WIR 239 at page 244 A-B.

(c...as the burden of proving the quantum of loss is on the Plaintiff, proof of all the factors necessary to arrive at the true quantification of the loss should necessarily fall on him. If tax is not to be deducted the burden should be on the Plaintiff to prove that factor just as it should be on him to prove the quantum of taxation, if tax is deductible...it is the tax payer or potential taxpayer who should be able to say what quantum of tax if any is deductible from his income.”

[22] Mr. Willie has not provided the Court with any evidence regarding whether he paid income tax or NIC. There is no evidence of how much he made when he did not work with Mr. Albert at Hy-ber Construction or how often he did such work to be able to make an assessment. It must be remembered that it is for Mr. Willie to support the claims which he makes and if he does not provide the Court with all the evidence or the best evidence possible, the Court cannot assume evidence to support the claims. I cannot therefore accept Ms. Da Breo’s submission that the salary slips presented were only some of his slips and do not show the full extent of what he earned. A letter from his employer could have supplemented the evidence.

[23] In the circumstances, the Court is prepared to accept that Mr. Willie made \$1,500 monthly on average based on the evidence presented and to make an award for loss of earnings to date from 13th October 2013 to 14th February 2019 in the sum of \$96,000.00 with a discount of 25% to take into account income tax and NIC deductions. The award for loss of earnings to the date of the assessment is therefore \$72,000.00.

C. Care-giving for one year

- [24] Mr. Willie claims the sum of \$9,600.00 for care-giving for one year. In his witness statements, he says that his girlfriend, Ms. Susan Boullie (**Ms. Boullie**) took care of him after he was discharged from hospital including bathing and feeding him for one year (up to November 2014). He says he paid her \$800.00 monthly. After that period his aunt Magella Enolis began providing him with a daily meal and he agreed to pay her \$400.00 monthly but he has been unable to do so (from December 2014 to present). There is no evidence to support the agreement to pay Ms. Enolis and in the circumstances, no award is made in that regard.
- [25] The witness statement of Ms. Boullie supports the evidence as regards her taking care of Mr. Willie for the year and the amount he said he paid her. Both the evidence of Mr. Willie and Ms. Boullie stand uncontroverted in this regard.
- [26] Ms. Richelieu submitted that there was no evidence to support this claim. Counsel further suggested that it would be strange that Mr. Willie would pay his girlfriend to take care of him and asked that a nominal sum be awarded as she accepted that Mr. Willie would have needed assistance after his incident. **Ms. Da Breo submitted that it was irrelevant that it was Mr. Willie's girlfriend who gave the care. She pointed out that neither Mr. Willie's evidence nor Ms. Boullie's had been tested in cross-examination** and that the Court should therefore accept the evidence.

Analysis

- [27] It is a fact that the evidence of the payment for care-giving stands uncontroverted. The Court is prepared to accept that in these kinds of situations it is highly improbable that receipts would be issued to someone who **provides that sort of care. I am prepared therefore to accept Mr. Willie's** evidence as supported by Ms. Boullie. I therefore award the sum of \$9,600.00.
- [28] The total sum for special damages is therefore: \$85,045.05

General Damages

A. Pain and suffering:

- [29] Mr. Willie experienced severe pain as a consequence of being attacked. He was prescribed pain medication for up to six months after the incident. He was chopped all over his body. He continues to experience pain and discomfort. He suffers from severe mental anguish which resulted in him having hallucinations and being admitted to the Mental Wellness Center. He continues to have sleepless nights and receives treatment and medication from the Mental Health Center. The injuries have affected his quality of life. He is right handed and struggles to perform his daily chores with his left hand. He suffers insomnia as a result of mental illness and is unable to work.

Nature and extent of the injuries sustained

- [29] Mr. Willie lost his right hand. He has significant scarring on many parts of his body including in some conspicuous areas like his face. He was diagnosed with Post Traumatic Stress Disorder (PTSD). **Dr. Jn. Baptiste's report** suggests that the traumatic event leading to the initiation of Mr. Willie's symptoms was the severing of his hand.

Nature and gravity of the resulting physical disability

- [30] **Mr. Willie's** functional capacity at home and work has been severely diminished. His ability to care for himself and to do household tasks has been reduced to the extent that a caregiver had to assist him domestically. In his witness statement, he says that his experience is in the building sector and he requires both of his hands to work but he is not able to perform the tasks necessary for his work such as hammering, steel bending. He says he has no other skill.

B. Loss of Amenities

- [31] Mr. Willie was a motor bike enthusiast prior to the incident. He was the owner of a motor bike which he rode daily as this was his hobby. He says he is no longer able to ride and has since sold the motor bike. He says he can no longer participate in the Independence Day Island Ride which he used to take part in every year. He is unable to concentrate when watching television and

listening to the radio as these raise his anxiety levels because of the noise and moving images. Mr. Willie says he had a small kitchen garden which he has not been able to maintain. Mr. Willie says he was unable to perform sexually for over one year after he was discharged from hospital and this severely affected his relationship with his girlfriend. There is no medical evidence to **support Mr. Willie's statement in his witness statement as to the cause for his sexual dysfunction.** He says his inability to perform sexually and his mental illness forced his girlfriend to leave the house.

- [32] Mr. Willie says he no longer goes to movies as he has difficulty focusing in noisy environments. He also says he is no longer able to write and sign his name properly as he is right handed. **Ms. Boullie's evidence supports the evidence of Mr. Willie as regards the effect of the incident and injuries on Mr. Willie's sex life and his relationship with his girlfriend. Ms. Boullie confirms by her statement that she left the house because of the strange behaviour of Mr. Willie which she says was frightening.**

Analysis

Pain and Suffering

- [33] In assessing damages for pain and suffering, the learned authors of Clerk & Lindsell on Torts state that injury includes disease and physical or mental illness. Mental anguish must be compensated for as well as actual physical pain. So, they say there must be compensation for a severely incapacitated **person's realisation of the condition to which he has been reduced or for the embarrassment of disfigurement.**⁵
- [34] Ms. Da Breo submitted that Mr. Willie should be awarded EC\$242,905.26 for mental injury which he suffered as a result of the attack on him by the defendants. She based this figure on the Judicial Studies Board Guidelines submitting that Mr. Willie suffered not only PTSD but also psychosis and that would lead to a higher award. In relation to pain and suffering, Ms. Da Breo suggested that an award of \$90,000.00 would be appropriate. Counsel

⁵ 20th ed. at para 28-55.

referred to the case of Jacqueline Pena Jasper de Jesus v British Virgin Islands Health Services Authority⁶ where the claimants were diagnosed with **moderately severe PTSD after the defendant disposed of the claimants' deceased baby without them seeing their baby.** The Court awarded US\$36,774.00 to each claimant. Counsel also relied on the case of Karen John v David Debiqne to support her suggested award for pain and suffering.

[35] **Ms. Richelieu challenged Ms. Da Breo's suggested awards and submitted that** the case of Jacqueline Pena was to be distinguished from the instant case as in that case, the claimants had been diagnosed with moderately severe PTSD **whereas Mr. Willie's PTSD had not been categorised.** Ms. Richelieu also submitted that in Jacqueline Pena there was no evidence that the claimants had undergone any treatment or that they were on medication. **In Mr. Willie's** case, the medical report of Dr. Jn Baptiste suggested that he was asymptomatic whilst on treatment. She therefore suggested that the award for mental injury suffered by Mr. Willie ought to be \$30,000.00 relying on the case of Michael Smith v Delta Petroleum (Caribbean) Ltd.⁷ where the claimant was awarded \$20,000.00 after he suffered PTSD following an explosion of a gas tanker whilst he was pumping fuel.

[36] Ms. Richelieu suggested that the award for pain and suffering and loss of amenities should be \$130,000.00. She relied on the case of David Balcombe v Vaughn Lowman⁸ where the award was \$115,000.00.

[37] With respect to pain and suffering and the resulting disability, Mr. Willie suffered some serious injuries the most serious of these being the fact that his right arm had to be amputated below the elbow as it could not have been salvaged. He lost two fingers on the right hand, got injuries to his nose as well as lacerations to his left leg. He was hospitalized for a total of 23 days. He also has resulting scars from his injuries. The medical report also shows that

⁶ BVIHCV2012/0101.

⁷ BVIHCV2008/0035, delivered 31st August 2012, unreported.

⁸ SVGHCV2006/0375, delivered 7th May 2012, unreported.

Mr. Willie had to undergo surgery and had to have repair of muscles and tendons which ultimately led to the amputation of his lower arm. Mr. Willie also had to be in the intensive care unit overnight and he was mechanically ventilated. The injury resulted in a permanent disability for Mr. Willie. From his evidence, his right hand was his dominant hand and so he now has to try to use his left hand which is not his natural disposition. In addition, Mr. Willie suffers from mental illness which is found by the medical report of Dr. Jn. Baptiste to be directly related to the trauma which he suffered as a result of the incident and the loss of his hand. The report of Dr. Frederick in 2016 also **notes that though Mr. Willie's recovery has been fair thus far he has been left** with significant sequelae, which means that there are significant disabilities remaining.

[38] The case of Jacqueline Pena reveals that the award made in that case related solely to the mental injury suffered as the claimants did not suffer any **physical injury as a result of the defendant's actions. I therefore agree that this** case is distinguishable. In the Michael Smith case, the award was \$75,000.00 for pain and suffering which included the fact that the claimant had suffered PTSD as a result of the explosion. The Court awarded \$20,000.00 for loss of amenities. What this case shows is that **contrary to Ms. Da Breo's** contention, the fact that the claimant suffers PTSD or mental illness as a result **of an accident or incident as in Mr. Willie's case is a factor to be considered** when assessing pain and suffering and the resulting disability. It is not that a separate award is to be made in relation to mental injury.

[39] In the case of John v Debique, the claimant who was 22 at the date of the incident and 29 at assessment suffered amputation of her right arm below the elbow. She had a permanent disability due to her injury. She was awarded \$110,000 for pain and suffering and \$120,000 for loss of amenities, totalling \$230,000 for general damages. Although the Court made mention of the **doctors' narratives being indicative of the traumatic** experience which the claimant had had from the night of the incident through the nightmare of her clinical evaluations and surgeries, there was no evidence that the claimant **suffered mental illness as in Mr. Willie's case.**

[40] In *Balcome v Lowman*, the claimant was a 33 year-old male who had his right arm amputated as a result of his injuries. He was 39 at the time of trial. In relation to pain, suffering and loss of amenities – the Court found that loss of his right hand would have resulted in some permanent disability and **disfigurement compromising the claimant's ability to do household chores and odd jobs about his home** and the quality of his life would have been reduced. Furthermore, he would continue to require assistance throughout his life as a result of the disability. A figure of \$115,000 was considered appropriate in the circumstances. The Court did not indicate what proportion was awarded for pain and suffering as opposed to loss of amenities and there was no evidence of mental injury suffered by the claimant.

[41] **Taking into consideration Mr. Willie's** physical injuries as well as the evidence of his mental injuries, the fact that he suffered from PTSD and psychosis as a direct consequence of the attack on him and for which he must be medicated, I am of the opinion that an award of \$150,000.00 is reasonable for pain and suffering.

Loss of Amenities

[42] In relation to loss of amenities, it is clear that Mr. Willie is no longer able to ride his motor bike, take part in the annual Independence Day round the island trip which from his evidence he did consistently every year. Mr. Willie provided no medical evidence to support his contentions as regards his sexual function but the evidence of his girlfriend certainly suggests that his injuries and the resulting mental illness spurred on by his injuries affected his relationship so much so that Ms. Boullie says she had to leave. In addition, Mr. Willie says he can no longer maintain his small garden as he used to and he cannot write and sign his name properly since he is right handed.

[43] The Court considers that an award of \$100,000.00 is reasonable for loss of amenities given the circumstances of Mr. Willie.

C. Loss of future income

- [44] As a result of incident Mr. Willie cannot work as a tradesman in the construction industry and is unable to get jobs because of his mental illness which is publicly known. Ms. Da Breo suggests that a multiplier of 18 should **be applied in Mr. Willie's case and the amount awarded should not be** discounted. Counsel relied on the case of *Julius Jeffery v CCAA Limited*⁹ where a multiplier of 15 was applied in the case of a 32 year old whose left thumb was amputated and his fingers were injured. On appeal, the Court of Appeal upheld the multiplier of 15 which had been applied by the High Court. In *Julius Jefferey*, the total figure for loss of income was discounted by 50% as the court reasoned that there was a good prognosis based on the medical evidence that the claimant would recover significantly with medical treatment. Ms. Da Breo suggested that **in Mr. Willie's case, his prognosis for** improvement was nil given that his hand was lost and the nature of the work he did and the skill set which he possessed required that he have two hands and therefore no discount should be applied.
- [45] Ms. Richelieu again submitted that Mr. Willie had not provided any evidence to support his \$3,000.00 a month salary. Counsel further submitted that Ms. Da Breo had simply stated that the Court should apply a multiplier of 18 without providing any justification for the increase. Counsel submitted that any amount awarded should be reduced by 20% to account for income tax and NIC deductions.
- [46] Ms. Da Breo in oral submissions referred to the case of **Cadet's Car Rentals** and another v *Pinder*,¹⁰ a judgment of the Privy Council on an appeal from the Court of Appeal of the Bahamas. In that case, the discussion centred on **the Court of Appeal's use of the Ogden Tables** to provide guidance for calculation of **future loss of earnings**. **The Privy Council opined that 'the courts of the Bahamas may, therefore, wish to consider ...whether it is appropriate to** refer to the Ogden Tables for guidance or whether it may be preferable to seek the assistance of actuarial tables designed to reflect the conditions prevailing

⁹ SVGHCV1999/0275, delivered 4th April 2003, unreported.

¹⁰ [2019] UKPC 4, delivered 28th January 2019.

in **The Bahamas.**' Ultimately, the Privy Council remarked that neither party to the appeal had suggested that the use of the Ogden Tables was inappropriate and therefore their Lordships sought guidance from these tables in deciding the appeal.

[47] The courts in our jurisdiction have never used the Ogden Tables as the basis for deciding the appropriate multiplier and I do not propose to start this trend. It seems more appropriate in my opinion to look at comparable cases in our jurisdiction and see what multipliers were applied.

Analysis

Multiplier and Multiplicand

[48] In plain terms the multiplier is a quantity by which a given number is to be multiplied. **In the award of damages for loss of future income, Mr. Willie's** age and working life form the basis for arriving at the multiplier. The following guidelines were enunciated in *Alphonso et al v Deodat Ramnauth*¹¹:

"In determining the multiplier a Court should be mindful that it is assessing general and not special damages. That it is evaluating prospects are that it is a once for all and final assessment. It must take into account the many contingencies, vicissitudes and imponderables of life. It must 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 he would have earned during his normal working life but for the accident."

[49] As stated in *Alphonso v Ramnauth*, the identification of the true multiplier depends on the individual facts and circumstances of each case and that there is no rigid formula. In the case of *Fenton Auguste v Francis Neptune*¹² the appellant was 24 years at the time of the accident which resulted in him being a paraplegic and completely unable to work. The Court of Appeal treated the appellant as having a working life of up to 65 years and fixed the multiplier at 18 as opposed to the 15 which had been applied by the High Court judge.

¹¹ Civil Appeal No. 1 of 1996.

¹² (1997) 56 WIR 229.

[50] The principle as laid down in *Cookson v Knowles*¹³ is that in arriving at the multiplicand, the basis should be the least amount the claimant would have earned if he had continued to work without being injured.

[51] Although the medical reports do not specifically state that Mr. Willie is not able to continue to work it is clear that given his physical condition and mental illness, this will be his reality. Certainly, he cannot continue to work at his **trade**. **Given Mr. Willie's current age and if he were to work until age 65, a multiplier of 15 would be applicable.** This is more in keeping with comparable cases where the injuries were similar. The injuries in *Fenton Auguste* were much more than the instant case and certainly all prospects of the claimant in that case ever working were nil. **In Mr. Willie's case**, he is still hopeful that if he gets his prosthetic arm, he can one day return to his trade.

[52] **I have already determined Mr. Willie's monthly income to be \$1,500.00** and therefore his loss of future earnings would be $\$1,500 \times 12 \times 15$ which is \$270,000.00. This amount is discounted by 25 % to take into account income tax and NIC deductions. That amounts to \$202,500.00. Normally the award for future loss of earnings would be discounted if the evidence shows a good prognosis that the claimant would recover significantly from any medical treatment. **I have to agree with Ms. Da Breo's** submission that there ought to be no discount in this case given the nature and extent of **Mr. Willie's** injuries coupled with his mental illness. I would agree that there is no assurance that he will get employment in our current work environment. I also agree with Ms. **Da Breo's** submission that the claimant lost his dominant hand and certainly there is no prospect of recovery of his hand and the nature of his trade requires that he have use of both hands. I therefore award the sum of \$202,500.00 for loss of future earnings.

¹³ [1979] AC556.

D. Future medical expenses

(a) Myoelectric Prosthetic Arm

- [53] Mr. Willie says he intends to purchase an artificial arm to improve his ability to get things done by himself and also to make him look better and perhaps to help him do work again in the construction sector. In his witness statement, Mr. Willie says he requires US\$100,000.00 for the purchase of the arm. He says the artificial hand will last three to five years and he will need to replace it periodically. He provides a quotation dated 30th November 2016 from Societe **D'Orthopedic Guitteaud in Martinique** in the sum of 31,204.91 Euros (approximately EC\$100,000.00) which is stamped by Dr. Horatius Jeffers, a local Orthopaedic Surgeon, but who gave no evidence in this claim.
- [54] **Ms. Da Breo submitted that given Mr. Willie's age and a life expectancy of seventy (70) years he would require seven (7) successive arms totalling EC\$703,853.36.**
- [55] Ms. Richelieu submitted that the Court should consider applying a multiplier approach to determine how many replacement arms Mr. Willie would require. She submitted that the case of Travia Douglas v Shivoughn Ward et al¹⁴ relied on by Mr. Willie is distinguishable from the instant case as in Travia Douglas the claimant suffered paraplegia as a result of a motor vehicular accident, which was a more severe injury than dismemberment. Further, counsel suggested that in Travia Douglas, **the claimant's doctor has made** recommendations as regards some of the future care that would have been required.
- [56] Ms. Da Breo submitted that there was no need to apply a multiplier approach to this case as the invoice stated that the prosthetic arm is guaranteed for three years and so it could be assumed that that is its life.

¹⁴ SKBHCV2008/0128, delivered 23rd October 2012, unreported.

Analysis

[57] In this case, no medical evidence was presented to show how many replacement prosthetic arms Mr. Willie would need during his lifetime. Mr. Willie presented a document titled 'Characteristics of myoelectric prosthesis' which states that 'social and aesthetic prosthesis are guaranteed for 3 years excluding theft or loss.' It is this Ms. Da Breo relies on to say that Mr. Willie would need a replacement arm every five years. However, this statement does not speak to the number of times the arm would require replacing but the length of time the arm is guaranteed for, in other words, the warranty period. When one reads the rest of the statement, this is very clear. How often a prosthetic limb requires changing would depend on several factors and none of this evidence has been made available to the Court. The Court cannot simply decide how many replacement arms would be required in the absence of medical evidence.

[58] **It is clear from the nature of Mr. Willie's injuries that he would require a prosthetic arm to be able to function especially as the limb which he has lost is his dominant hand.** The total number of replacement arms Mr. Willie would require is simply not supported and the Court is cautious not to just simply make such a determination in the absence of medical evidence to support issues relating to the frequency of replacement of the prosthetic arm. Whilst I was tempted to say that it is reasonable that he would at least need to replace the arm once within the remainder of his life, I think that this is speculation which is dangerous and I will refrain from adopting such a position.

[59] In the circumstances, I make an award of EC\$100,000.00. No other evidence as regards costs of outfitting the arm and attendant costs have been provided by Mr. Willie which is rather unfortunate.

(b) Future domestic assistance

[60] Ms. Da Breo submitted that Mr. Willie would require some form of domestic assistance to assist with his daily chores. Counsel relies on the case of

Dwight Mayers v Carl Williams et al¹⁵ in which the Court awarded \$25,000 for the cost of future care. The claimant in that case was 25 years at the time of the accident and had two fingers amputated and two rendered functionally useless as a result of the accident. Ms. Da Breo submitted that \$40,000.00 was an appropriate **award given Mr. Willie's disability and the greater** domestic assistance which he will require.

- [61] Ms. Richelieu referred to the case of Baptiste v Ballantyne et al¹⁶ in which an award of \$18,000.00 was made in relation to a claimant who was 29 years and who would require domestic assistance for the rest of his life. The Court in that case adopted a multiplier of 15 and accepted that \$400.00 would be a reasonable monthly sum for domestic assistance. Ms. Richelieu suggested that an award of \$20,000.00 would meet the justice of the case.

Analysis

- [62] The monthly sum suggested by the evidence of Mr. Willie is \$400.00. If the Court were to adopt the approach in Ballantyne, the award would be much more than that which Mr. Willie is claiming. Given that the amount of \$25,000.00 was awarded in the Dwight Mayers case where the result of the **claimant's injuries were similar to Mr. Willie's in that they both could not use** their hand. A hand with no functioning fingers to my mind is just as bad as having no hand. Given that Dwight Mayers was decided in 2006, some 12 years ago, I consider that an award of \$35,000.00 for future care is not unreasonable taking inflation into account.

Claimant No. 2-Mr. St. Clair Augustin

Evidence

- [63] Mr. St. Clair Augustin (**'Mr. Augustin'**) **was 56 years old** at time of incident. At the date of assessment he was 61 years. At the time of the incident, his evidence is that he was employed as a security guard with the Government of Saint Lucia. The injuries suffered by Mr. Augustin are supported by the medical report of Dr. Danny Frederick dated 15th July 2014. In that report, Dr.

¹⁵ SVGHCV2002/0029, delivered 17th March 2006, unreported.

¹⁶ SVGHCV2001/0251, delivered 17th March 2006, unreported.

Frederick details the following injuries: (a) incisive lacerations (x2) to the posterior aspect of the left forearm (middle 3rd); (b) patient unable to extend the fingers of the left hand; (c) deep incisive laceration to the anterior-lateral aspect of the left forearm (mid 3rd); (d) deep incisive laceration to the posterior aspect of the right forearm (mid-proximal 3rd) with discontinuity of the right ulna visible.

[64] Mr. St. Augustin was hospitalized at Victoria Hospital as an inpatient and discharged from on 25th October 2013. Treatment for the injuries included resuscitation, wound lavage, temporary closure, surgical treatment: muscle repair to both forearms and open reduction and internal fixation of fracture to right ulna with K-wire, immobilization of upper limbs using casts, K-wire removed on 17th January 2014, casts removed at the end of January 2014 and vigorous physical therapy for an extended period of time.

[65] Mr. Augustin in his evidence says that he continues to suffer pain, he is unable to properly close his hands and is unable to clutch items and do many things which he used to do for himself prior to the incident. He also says he has four significant scars on his arms.

Special Damages

A. Medical expenses:

[66] Mr. Augustin claims hospital fees in the sum of \$2,610.00 and \$50.00 for medical reports from Victoria Hospital.

[67] Ms. Richelieu pointed out that the invoice presented for the hospital expenses was in relation to Martin Willie and not St. Clair Augustin and that there was no receipt for the medical report. Ms. Da Breo conceded that this was the case.

Analysis

[68] Special damages must be specifically pleaded and proven, and Mr. Augustin has failed to prove the loss which he claims. Consequently, no award is made under this head of medical expenses.

B. Loss of income

[69] Mr. Augustin claims the sum of \$400.00 monthly from 13th Oct 2013 to 13th Oct 2014 totalling \$4,800.00. His evidence is that he worked as a part time farmer and as a result of the incident he was unable to go to his garden for nine months.

[70] Ms. Richelieu submitted that Mr. Augustin failed to produce any evidence to show how much money he earned from farming. In addition, she says Mr. Augustin claimed loss of earnings for one year yet in his witness statement, he says he was unable to work for nine months.

[71] Ms. Da Breo submitted that the evidence of Mr. Augustin was uncontroverted and therefore should be accepted and that although he was a security guard he made money from his farming which he was unable to do.

Analysis

[72] Although Mr. Augustin says he worked as a security guard there is no evidence of his earnings as such. He has provided no evidence of his earnings which suggests that after the incident he went back to work as a security guard. He does not say what he means by part-time farmer. In addition, Mr. Augustin says in his witness statement that he does small scale farming as a hobby. I conclude that this is not his job but a past time which may be more applicable to the assessment of loss of amenities. In the circumstances, the Court makes no award for loss of earnings.

C. Care-giving

[73] Mr. Augustin claims the amount of \$1,400 for the cost of care-giving for two months at \$700.00 monthly. His evidence is supported by Ms. Justina Willie, his sister who confirms that she took care of Mr. Augustin for two months after he was discharged from hospital. She says she continued to take care of him at no further cost to Mr. Augustin. She says Mr. Augustin used to do farming which he has returned to but on a smaller scale.

Analysis

- [74] This evidence is uncontroverted and therefore I make the award of \$1,400.00 for the cost of care-giving for two months.

General Damages

A. Pain and suffering

Nature and extent of the injuries sustained

- [75] **Mr. Augustin's evidence is that he experienced severe pain as a consequence** of being attacked. He was chopped on both arms and had to wear casts and continues to experience discomfort and pain. He says he is unable to fully close his hands as he used to.

Nature and gravity of the resulting physical disability

- [76] **Mr. Augustin's** functional capacity at home and work severely diminished. His ability to care for himself and to do household tasks reduced to the extent that a care taker had to assist him domestically. He says he is limited in his capacity to perform tasks that require 100% performance capacity in the range of movement for his hands and wrists. **In Dr. Frederick's report of 15th July 2014, he indicated that Mr. Augustin's range of motion** had significantly improved reaching 80% when he was last seen in June 2014. Mr. Augustin says he is afraid when he sees someone walking with a cutlass and he has nightmares about the attack since it happened.

B. Loss of Amenities

- [77] **Mr. Augustin's evidence** is that he is unable to hold a cutlass firmly to chop bush and to dig.
- [78] Ms. Richelieu submitted that partial disability can only be determined by an expert. The medical report produced by Mr. Augustin shows that he achieved more than 80% improvement by 2014, however there is no mention in that report of the extent of **Mr. Augustin's disability at present or of his** inability to grip tools etc. Counsel further submitted that the case of *Ann Mitchell v St.*

Vincent Electricity Services Ltd.¹⁷ where the award for pain and suffering and loss of amenities was \$20,000.00 and which Mr. Augustin relies on is dissimilar to the instant case as the claimant in that case suffered a fractured elbow and subsequently developed osteoarthritis seven after her accident. Ms. Richelieu submitted that the injuries in that case are different to that of Mr. Augustin.

[79] Ms. Da Breo also relied on the case of Damon Dubois v Matthias Jerome et al¹⁸ **where the claimant's injuries were primarily to his arms and the court** awarded \$27,500.00 for pain and suffering and loss of amenities and Shunetie Thompson et al v Owen James et al¹⁹ where even in the absence of medical evidence the court considered making an elevated award because of the obvious trauma and grief that the claimant had suffered.

[80] Ms. Richelieu submitted that Damon Dubois is different to the instant case. In Damon Dubois, the medical report revealed that the claimant who was 27 years old, a right-handed young man has a markedly reduced range of motion in his right wrist and mildly stiff fingers and thumb which impacted his otherwise socially active lifestyle. He had also undergone extensive physiotherapy. Ms. Richelieu contended that in the instant case, whilst Mr. Augustin suffered injuries to his arms and hands, the evidence did not show that he was partially disabled or the extent of any permanent disability. Counsel was also of the view that Shunetie Thompson was not helpful in the instant case.

Analysis

Pain and Suffering

[81] Mr. Augustin suffered serious lacerations to both his upper arms and had to have casts on both arms. The medical report of Dr. Frederick dated 15th July 2014 shows that Mr. Augustin was unable to extend the fingers on his left hand and that he had to have surgery to repair muscle to both forearms and to

¹⁷ SVGHCV1998/0058, delivered 31st July 2000, unreported.

¹⁸ GDAHCV2011/0088, delivered 7th March 2012, unreported.

¹⁹ SVGHCV2012/0138, delivered 5th August 2014, unreported.

correct a fracture to his right ulna. He was hospitalized for a total of 11 days. He also has resulting scars from his injuries. The 2014 report of Dr. Frederick also **states that Mr. Augustin's range of motion of his fingers** and wrist had significantly improved reaching more than 80%. This means that in 2014, Mr. Augustin had a disability of 20%. There was no recent medical report **submitted to show the current medical condition of Mr. Augustin's injuries** and so the Court is **in no position to assess Mr. Augustin's resulting disability**. Mr. Augustin's **evidence as to** the emotional impact of this incident and his injuries on him which have resulted in him not being able to sleep and him being afraid of persons with cutlasses can be considered by the Court in making an award for pain and suffering. However, I am of the view that this is not a Shunetie Thompson case which merits an elevated award. In Shunetie Thompson, the claimant lost her child as a result of a vehicular accident during her pregnancy which then caused her to go into pre-term labour which led to delivery of a still born. That certainly cannot compare to the instant case. **There is no medical evidence of Mr. Augustin's mental or emotional state**. In these circumstances given the injuries which Mr. Augustin suffered, the Court considers that an award of \$20,000.00 is reasonable for pain and suffering.

Loss of amenities

- [82] In relation to loss of amenities, the only evidence of this relates to the fact that Mr. Augustin says that he is unable to hold a cutlass to do his gardening which is a hobby. Apart from this, there is no other evidence of loss of amenities. No award is made for loss of amenities. It is clear that Mr. Augustin resumed his gardening albeit on a smaller scale than before.

Interest

- [83] Interest is awarded as follows on the sums specified in paragraph 84 as follows:
- Pre-judgment interest: on special damages at the rate of 3% from the date of the incident to the date of judgment; on general damages for pain and suffering and loss of amenities at the rate of 6% from the date of service of the claim to the date of judgment.

Post-judgment interest: on the total combined award for special and general damages at the rate of 6% from the date of judgment to the date of payment. No interest is awarded on future medical expenses or on future loss of earnings.

Conclusion:

[84] The Order of the Court on this assessment is as follows:

The defendants, Nos. 1,2,3,5,6,and 8, i.e. Chervy Oliviere, Jonathan Hunter aka Didi, Emmon John, Brian Oliviere, Justus Leo aka Tibo and Carlo are to pay the following damages jointly:

A. To the first claimant, Mr. Martin Willie:

- (i) Special damages in the sum of \$85,045.05 with interest thereon at the rate of 3% from the date of the incident, 13th October 2013 to the date of the judgment;
- (ii) General damages as follows:
 - (a) Pain and suffering in the sum of \$150,000.00 with interest thereon at the rate of 6% per annum from the date of service of the claim to the date of the judgment;
 - (b) Loss of amenities in the sum of \$100,000.00 with interest thereon at the rate of 6% per annum from the date of service of the claim to the date of the judgment;
 - (c) Loss of future earnings in the sum of \$202,500.00;
 - (d) Future medical expenses in the sum of \$135,000.00;
- (iii) Interest on the global award of \$672,545.05 at the rate of 6% per annum from the date of judgment to the date of payment.
- (iv) Prescribed costs on the global award pursuant to CPR 65.5.

B. To the second claimant, Mr. St. Clair Augustin:

- (i) Special damages in the sum of \$1,400.00 with interest thereon at the rate of 3% per annum from the date of the incident, 13th October 2013 to the date of judgement;

- (ii) General damages for pain and suffering in the sum of \$20,000.00 with interest thereon at the rate of 6% per annum from the date of service of the claim to the date of judgment;
- (iii) Interest on the global award of \$21,400.00 with interest at the rate of 6% per annum from the date of judgment to the date of payment.
- (iv) Prescribed costs on the global award pursuant to CPR 65.5.

[85] I thank Counsel for their written and oral submissions.

Kimberly Cenac-Phulgence
High Court Judge

By the Court

Registrar