

**IN THE SUPREME COURT OF BELIZE, A.D. 2001**

**Action No. 577/2001**

<b>(NORBERTO CASTANAZA</b>	<b>PLAINTIFF</b>
<b>(</b>	
<b>(AND</b>	
<b>(</b>	
<b>(</b>	
<b>(OSCAR TZIB</b>	<b>DEFENDANT</b>
<b>(PLASTIC WORLD LIMITED</b>	

Mr. N. Dujon, for the claimant.  
No appearance for the defendants.

AWICH J.

15.3.2006

JUDGMENT

1. *Notes: Assessment of general damages; left leg amputated, and overall permanent disability at 50%.*
2. This judgment is about assessment of damages for the plaintiff, now claimant, against the second defendant, Plastic World Ltd, only. The question as to liability was not contested by both defendants. On 20.10.2005, the claimant entered default interlocutory judgment for damages to be assessed, against the second defendant. No default judgment was entered against the first defendant although he did not file a memorandum of appearance. At pretrial review on 24.1.2006, learned counsel Mr. N. Dujon,

for the claimant, informed the Court that the claimant would have damages assessed only against the second defendant. The Court ordered that affidavit evidence be filed to prove any damages.

3. The case arose out of a motor accident on 9.12.2000. The claimant who was riding a bicycle was knocked down by a motor vehicle driven at the time by the first defendant. He was an employee and servant of the second defendant who was sued on the ground of vicarious liability. Obviously learned attorney Mr. N. Dujon, has considered the practical reasons for pursuing the claim against the second defendant only.
4. According to a medical report made by Dr. John Waight, the claimant sustained severe open injury to the left lower limb resulting in a near total amputation. The claimant was admitted to Corozal Hospital and later transferred to Karl Heusner Memorial Hospital, Belize City. The wound was “extensively debrided and external fixator was applied”. The claimant was discharged as an in-patient after one month and fourteen days, but continued to receive medical attention as an out-patient.
5. On 9.8. 2001, six months and fourteen days later, Dr. Waight reviewed the condition of the claimant. He found that the claimant still had pain at the site of the injury, the ankle and foot remained chronically swollen, there was little movement of the toes and there was non-union of the fractured bones, the lower third of the tibia and fibula. “Further surgery in the form of internal fixation and bone grafting” was necessary and recommended. Because of lack of facilities in Belize, the doctor recommended that the

surgery be carried out at a hospital in the USA.

6. The claimant went to the USA for the surgery. It was decided that his left leg below the knee be amputated at 10 cm below the tibial tuberosity. That was done. He was fitted with a prosthesis (an artificial leg).
7. Dr. Waight again reviewed the condition of the claimant on 7.11.2006, five years and three months after the injury was sustained. Dr. Waight was of the view that the claimant: “remained in apparent good health. The amputation stump was well healed and the range of movement of the left knee was preserved”. He assessed permanent disability due to the amputation at 50%.
8. The claimant was a farm worker cutting and loading cane seven months in the year. He earned \$175 per week before the injury, and \$100 after the injury because he cannot do work involving climbing truck. He continued to work on sugarcane farms. He is now 47 years old.
9. It is pretty obvious that the claimant incurred expenses for and relevant to the treatment he has obtained locally and in the USA. No proof of those expenses were presented to Court. The evidence presented was relevant only to general damages. I assume there was good reason for excluding evidence to prove special damages. May be the expenses have otherwise been paid for. Court cannot award any special damages without them having been specifically pleaded and proved.
10. An award of general damages in a bodily injury case is meant to compensate

for, pain and suffering, psychological effect arising and for loss of amenities, which are presumed to be occasioned. The extent in each case differs and must be proved. It is impossible in a bodily injury case such as this, to reinstate the claimant to the position he was in before the injury. No sum of money can effect reinstatement of a person whose leg has been amputated, however, a fair monetary award provides some solace. The guiding principle in assessing monetary compensation in bodily injury cases is that, “*the claimant is entitled to a fair and reasonable, as distinct from perfect, compensation, assessed in the light of previous awards in respect of comparable damage*” - see *Fletcher v Antocar and Transporters Ltd [1968] 2 Q.B. 322*, and a case from this court, *Leroy Romero v Alice Cynthia Poot, Action NO. 366 of 2001*. It has to be noted that a reasonable compensation sum in Belize may not be a reasonable compensation sum in Guatemala, Mexico, the USA or the United Kingdom.

11. I have considered the pain and suffering of Mr. Castanaza for about a year, the loss of his limb resulting in loss of amenities, the loss of ability to earn at about 44%, and the permanent incapacity of about 50% that he has to live with. The claimant is not a professional sportsman, he played games as a matter of recreation. He is now 47 years old. I have also considered past awards in this jurisdiction for similar injury. The award of general damages that I consider fair to this claimant taking into account today's dollar worth is \$180,000. (One hundred and eighty thousand).
12. I also grant interest on the sum awarded for damages, at the court interest rate of 6% per annum, effective from today, 15.3.2006, the date of judgment,

until full payment. I took into consideration that the defendant did not contest liability and that there has been no evidence to show that any demand for payment of damages was refused at all or unreasonably, by the defendant.

13. Costs payable is \$7,000 (seven thousand).
14. The awards herein are against the second defendant only.
15. Pronounced this Wednesday the 15<sup>th</sup> day of March 2006.

At the Supreme Court,  
Belize City.

Sam Lungole Awich

Judge

Supreme Court of Belize