

IN THE SUPREME COURT OF BELIZE, A.D. 2009

ACTION NO. 103 OF 2003

	(ADOLPH VANCOLBIER	PLAINTIFF
	(
BETWEEN	(AND	
	(
	(ROMEL BERGESS	DEFENDANTS
	(MANUEL PEREZ	

Before: Hon Justice Sir John Muria

27th November, 2009

Mr. Philip Zuniga SC for plaintiff

No Appearance for Defendants

J U D G M E N T

WRIT/CLAIM – assessment of damages – personal injuries arising from traffic accident – measure of damages in Belize – principles applicable in assessing damages – interest on award

1. **Muria J.** This case started in 2003 in Action No. 103 of 2003 in which the claimant claims damages for personal injuries suffered and for losses, expenses and inconvenience incurred as a result of an accident which occurred on or about 23rd June 2002 between Miles 7 and 8 on the Northern Highway, Belize District. The

accident was caused by the negligent driving of the second defendant as servant or agent of the first defendant.

2. The writ was issued on 6th March 2003 and served on both defendants on 26th May 2003. No appearance was entered by either of the defendants and so on 16th June, 2003 a default judgment was entered against both defendants in favour of the plaintiff/claimant for damages to be assessed.
3. By the order of the Registrar issued on 8th July 2003, it was ordered that damages be assessed on affidavit evidence. The matter had, however, not been dealt with since then. The assessment hearing was eventually done on 23rd July 2009 before this court.
4. It should be noted that the defendants had not taken any steps since the commencement of these proceedings against them. I should also mention that Notice of Action against the first defendant, the Insured Holder of the Third Party Motor Vehicle Insurance, was

also served on the Fire & General Insurance Company Limited on 9th December 2003.

Brief Background

5. The brief background to this case shows that on 23rd June 2002 at about 8.30 p.m., between Miles 7 and 8 on the Northern Highway, Belize District, a ten wheeler truck owned by the first defendant and driven by the second defendant collided into the claimant's pick up truck. The defendants' ten wheeler truck had no headlight on its driver's side, and it was overtaking another vehicle at the time it collided with the claimant's pick-up truck.

6. As a result of the accident, the claimant suffered injuries and had to be hospitalized at the Karl Heusner Memorial Hospital (KMH) where he was diagnosed and treated for injuries to the head, left leg and left hip. The claimant suffered post traumatic loss of consciousness for two days, as well as episodes of headaches, dizziness, vomiting and collapse. Further medical examinations revealed that the claimant suffered multiples injuries: mild head

injury and other multiple minor injuries to the other parts of the body.

7. The claimant continued to experience pain, even six years after the accident. On 25 March 2008, MRI procedures were performed on his pelvis at the Belize Diagnostic Centre, followed by a biopsy procedure performed on his left thigh at the KHMH on 26 March 2008. The claimant now has to use a cane to support himself when walking.

Assessment of damages

8. The case is virtually undefended with Judgment already entered for the claimant. The sole issue is therefore, one of ascertaining the appropriate quantum of damages for the claimant.
9. I feel in a case such as this, it is incumbent on the Court to consider and determine the approach to be adopted in assessing damages in cases of this nature in Belize. This is important since the body of case law in Belize, on this area of the law is still developing. An established approach developed by the Courts in Belize would be

helpful, not only to the parties but also to the general public, as well as in the development of the law in personal injury cases.

10. As Moe J (as he then was) did in *Lloyd Alfred -v- Nicholas Burgos* (6 August 1981) Supreme Court of Belize, Action No. 215 of 1978, I, too, respectfully adopt the following guiding remarks made by Wooding CJ in *Cornilliac v St Louis* (1965) 7 W.I.R. 491:

“In a jurisdiction such as ours in which assessments of general damages are made by the judges without the aid of juries it has become accepted principle that the courts should strive for as high a measure of uniformity of awards as is reasonably practicable. ... Such uniformity as may be practicable should conform with current trends here and not elsewhere. ... We ought consciously to set about establishing and following trends of our own. But until we do, we should pay heed to and take such guidance as we can from awards elsewhere, making such adjustments as may be appropriate having regard to our own prevailing conditions”.

Two other previous Belizean cases, *Tillett v Atherly* No. 68/71 and *Antonio Gutierrez v Cornelio Ek* (14 February 1980) Action No. 87 of 1976 followed *Cornilliac*. I note that the Counsel for the claimant in the present case was also Counsel for the plaintiff in the *Gutierrez -v- Ek* case (above).

11. The case law authorities cited by Counsel for the claimant are very helpful. However, each case must be determined on its own circumstances, since the facts giving rise to the injuries suffered and the nature of the injuries themselves vary from one case to another. Nevertheless the principles of law espoused in previous cases decided by the Courts do provide guidelines for the Court to consider in later cases.

12. Before I proceed to consider the actual amount of damages to be awarded in this case, I wish only to add that the task of assessing non-pecuniary damages is not easy. It is said that all that needs to be done is to assess and award what is reasonable, fair or moderate and conventional. Lord Morris of Borthy-Gest, in *H. West & Son*

Ltd. -v- Shepherd [1963] 2 All ER 625 (“West’s case”) at p. 631, puts it as:

“All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In that process there must be the endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional.”

13. Since our case law is still developing in this area of the law, the task of showing what is reasonable, moderate and conventional may not be as easy as in other developed jurisdictions. Of course, if we have a firm body of case law in our own jurisdiction showing what is reasonable, moderate and conventional, the task would be much easier for judges and courts in Belize.

14. Nevertheless, my task in the present case, in order to achieve what Lord Morris of Borthy-Gest said, is to find, first of all, what is fair to the claimant as an individual. This is because the object of damages, as far as he is concerned, is to compensate him with money for his personal injuries. Secondly, there is the need to see that the award is fair in the eyes of the community in which the Court has jurisdiction. A fair-minded community will be satisfied to see the defendant being called upon to carry out his “*moral obligations... to do for the claimant whom by his careless act he had reduced to so pitiable a condition*” per Lord Devlin in West’s case at page 638. Thirdly, the need to be fair between plaintiffs/claimants generally. This consideration encapsulates the need to be fair in the eyes of the community and the need for uniformity in awards.

15. Having stated the above principles, I turn to the issue of the amount of damages. The claimant is now 76 years of age. At the time of the accident he was 69 years old. He was injured and hospitalized as a result of the accident in which a Ten Wheeler

Truck owned by the first defendant and negligently driven by the second defendant collided into his pick-up truck. As a result of the collision, the claimant was unconscious. He regained his consciousness at Karl Heusner Memorial Hospital (KHHM).

16. The Doctor's Medical Report shows that the claimant suffered "*multiple injuries, mild head injury and multiple minor injuries.*" These minor injuries include periorbital ecchymosis, abrasions at left elbow and left hip. Protocol for multiple trauma and mild injury was done to the claimant, as well as a follow-up clinical assessment at the out-patient. He was experiencing fainting spells (syncope) which necessitated further re-evaluation by the neurosurgeon. Even by March 2008, six years after the accident, the claimant continued to experience pain when walking. This resulted in the claimant having to be admitted at KHHM for biopsy procedure which was performed on him on 26 March 2008.

17. Happily, and in the interest of achieving consistency in determining the issue of damages in cases of this nature, I am content to follow the approach taken by the courts in the cases referred to by Mr.

Zuniga S.C., in particular, the case of *Cornilliac -v- St. Louis*, a decision of the Court of Appeal of Trinidad and Tobago which has been followed by the courts in a number of cases here in Belize. That case sets out the various heads and the principles under which general damages are to be assessed. Wooding CJ in the *Cornilliac* case sets out the following considerations under which general damages are to be assessed:

- “(i) the nature and extent of the injuries sustained;
- (ii) the nature and gravity of the resulting physical disability;
- (iii) the pain and suffering which had to be endured;
- (iv) the loss of amenities suffered; and
- (v) The extent to which, consequently, the Claimant’s pecuniary prospects have been materially affected.”

18. In *Lloyd Alfred -v- Nicholas Burgos* (above) the injuries are loss of left eye, loss of the right middle finger and partial loss of function of the right index finger. After considering the heads of damages and other factors set out in *Cornilliac -v- St. Louis Moe*

J. (as he then was) awarded general damages in the sum of \$24,000.00. It is a case involving injuries from gun shots.

19. Counsel also made reference to the case of *Bernard Briceno -v- Lester West and Clifton West* (7th August, 1984) Supreme Court of Belize, Action No. 107 of 1984. That case concerns assessment of damages for injuries arising out of motor vehicle accident. The injuries suffered by the victim in that case were very severe. Among other injuries, the claimant suffered damage to spinal cord causing deformity to the spine, near total paralysis of the right low limb and partial paralysis of the left lower limb use of wheelchair to move around and could no longer engage in sexual activity. He was only 27 at the time of the accident, and married with two children. He was a Private in the BDF. The court (Moe CJ) awarded the plaintiff \$60,000.00 as general damages for pain and suffering and loss of amenities, \$72,508.80 for loss of future earnings, \$12,000.00 for future medical care, and \$300.00 for special damages, making the total award in that case to \$144,808.80.

20. The other case referred to by Counsel is that of Yvonne Crawford and *Lisandro Torres -v- Gustavo Cardenas Jr.* (1st October 2008) Supreme Court, Claim No. 126 of 2007. In that case, the defendant collided with the claimant's vehicle which was parked on the off-side of the road. Ms. Crawford suffered a closed fracture of the frontal bone, and other injuries to the face.
21. The facial injuries resulted in her having visible scars on her face and left cheek. Her occupation as a kitchen supervisor at Belize River Lodge was adversely affected by the injuries she suffered. She was assessed at 10% total body disability. Hafiz J awarded her \$41,364.07 as general damages.
22. The second claimant, Lisandro Torres, sustained injuries to the face, elbow, knees and right calf. There was a closed injury to the left knee. His injuries adversely affected his occupation as a welder for eleven weeks. He was assessed at 5% total body disability. The court awarded him \$42,698.40 as general damages.

23. In the case that I mentioned earlier, *Antonio Gutierrez -v- Cornelio Ek* (above), the plaintiff was struck by a vehicle driven by the defendant in a zig-zag manner. The plaintiff was standing some 10 feet from the edge of the road. The plaintiff was hospitalized for three weeks. He suffered permanent weakness in his left side, flexion on the finger joints, wrists, left elbow, the knee, left hip is very limited. He was unable to grip with his left hand and could not walk unaided. He also suffered from lapse of memory. He was 58 years old at the time of the accident. The court assessed general damages at \$12,500.00 under heads (i) to (iv). There was an assessment for loss of pecuniary benefits under head (vi), in the sum of \$9,125.00, giving the total general damages in the sum of \$21,625.00.

24. As I have mentioned earlier, each case depends on its own set of circumstances. The present case is not at par with any of the cases cited and it was never meant to be. However, considering the whole circumstances of this case, including the injuries suffered and the effect on the claimant, I feel I can safely place this case, certainly, not as high as the *Bernard Briceno -v- Lester West* case,

but somewhere in the region between *Gutierrez -v- Ek* and *Yvonne Crawford -v- Gustavo Cardenas Jr.* cases, noting, of course, that the former was decided almost 30 years ago.

25. Unlike in the two cases just mentioned, the claimant here has not sought compensation for loss of future earning, perhaps since he had already retired. I would not totally discount it, had it been raised and evidence adduced to support it. However, the issue, if any, of a retired injured person being able to claim for loss of future earning capacity can await another occasion.
26. In the present case, in my judgment the claimant is entitled to general damages for injury, pain and suffering, and inconvenience together with loss of amenities under heads (i) – (iv). No amount, of course, can fully compensate the claimant in such a case because money can never do that. So much so, that the platitude “*that the purpose of compensatory damages in action for personal injuries is to put the victim in the same position as he would have been if he had not sustained those injuries, so far as money can do this*” is, respectfully, in my view, not one that is compatible with

real life situation. Nevertheless, the award of damages in such cases is to compensate the injured claimant for the losses and injuries he suffered. The amount awarded should be seen as the court's best effort at attempting to be just and fair, to the claimant individually, as well as, in the eyes of the community which ought and able also to see that the defendant has in fairness paid for the expenses he put the claimant through by his action that caused the claimant suffering and pain.

Conclusion and order

27. I assess the amount of general damages in this case to be \$25,000.00 under heads (i) to (iv). There is no award for pecuniary damages under head (v), as none is claimed. Special damages are undisputed in this case, and I award the amount claimed which is \$40,350.10 which includes \$36, 177.75 being the cost of the claimant's 1996 Green 2-door Ford Pickup Reg. No. C12020, together with other expenses incurred and deposed to in his affidavit evidence sworn to on 30th December, 2008 and filed on 31st December, 2008 in support of his claim. The total

award is therefore \$65, 350.10. Judgment is therefore given for the claimant in the total sum of \$65,350.10.

28. There is a claim for interest in the Statement of Claim. In the exercise of the court's discretion under section 166 of the Supreme Court of Judicature Act (Cap. 91), I order interest at 3% per annum on the judgment sum from the date of issue of the Writ/Claim, that is 6th March 2003, to the date of judgment.

The claimant shall also have his costs of these proceedings.

Order accordingly.

(Sir John Muria)
Justice of Supreme Court