

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM NO. CL D-056 of 2001

BETWEEN	HAUGHTON DUHANEY	CLAIMANT
AND	ELECTORAL OFFICE OF JAMAICA	1st DEFENDANT
AND	CANUTE MILLER	2nd DEFENDANT

Marion Rose-Green and Tania Mott for the Claimant instructed by Marion Rose-Green & Co.

Tamara Dickens for the 1st Defendant instructed by the Director of State Proceedings

HEARD: February 9th and 10th, 2009 and September 17, 2009

Rattray J.,

1. Haughton Duhaney was a driver employed to the Electoral Office of Jamaica. Born on the 6th December, 1947, approximately one month prior to his 50th birthday, on the 2nd November, 1997, while being transported to work in a motor vehicle, in respect of which arrangements

were made by his employer, the driver of that motor vehicle, Canute Miller crashed into a utility pole.

2. Haughton Duhaney suffered severe and extensive personal injuries primarily to his head, face and neck. He sustained numerous facial fractures to his cheek bones and jaw bone, concussion, loss of teeth and whiplash injuries, necessitating treatment by two Faciomaxillary Surgeons, Dr. S. Donaldson and Dr. Hal Shaw, as well as by a Neurosurgeon Dr. Randolph Cheeks.
3. His injuries and the outline of his disabilities consequent upon this accident were so serious, alarming and far-reaching that their description, when outlined in the Statement of Claim filed on Mr. Duhaney's behalf amounted to sixty-three (63) Particulars of Injuries. And yet, he still is to be considered fortunate as he survived this tragic accident, while one of his co-workers, also a passenger in that ill-fated vehicle, did not.
4. At the start of this trial, some eleven (11) years after this regrettable incident, liability was admitted on behalf of the 1st Defendant, the Electoral Office of Jamaica, a Consent

Judgment entered and this Court embarked upon a contested Assessment of Damages.

5. **Special Damages**

It is trite law that a Claimant who alleges that he has incurred out of pocket expenses as a result of a Defendant's negligence, must not only plead such items of expense, but must also strictly prove such loss. This principle accords with the well known maxim, "He who alleges must prove". Counsel for the 1st Defendant Ms Dickens, nevertheless cited the unreported case of **Attorney General of Jamaica vs. Tanya Clarke (nee Tyrell) SCCA No. 109 of 2002** in support of that age-old doctrine of law.

6. When this trial commenced, the Court granted an amendment to permit Counsel for Mr. Duhaney, Ms. Rose-Green to add two (2) items to his claim for Special Damages:-

- (a) Loss of Earnings - \$697,366.80
- (b) Medical Expenses - \$41,480 & £818.00

7. **Loss of Earnings**

The Claimant's evidence is that he was paid his basic salary by the Electoral Office of Jamaica from the date of the accident in November, 1997 up to the 31st December, 2003, when his services were terminated. His claim under this head of damages was for lost earnings from January, 2004 for five (5) years totaling \$697,366.80, as he alleged that he had not been able to find suitable employment since the accident as a result of his injuries.

8. Counsel Ms. Dickens challenged his entitlement to an award in this regard on the ground that there was no medical evidence before this Court that the Claimant was unable to work. Further, she argued that evidence that was obtained under cross examination indicated that Mr. Duhaney made no attempt to mitigate his loss by seeking suitable or any employment whatsoever.

9. The Claimant has a duty to take all reasonable steps to mitigate his loss consequent on a wrong caused by the Defendant. Nowhere in his evidence is there any indication that he attempted to seek or obtain employment in any field of endeavour of whatever nature. There is no

medical evidence before this Court which revealed that as a result of injuries sustained, Haughton Duhaney was unable to work or was unemployable. In answer to Counsel Ms Dickens as to whether he tried to get another job that was not stressful on his body, Mr. Duhaney replied that he did not try.

10. I do not wish it to be thought that this Court is unmindful of the trauma nor insensitive to the pain that Mr. Duhaney must have undergone as a result of this accident. However, the burden rests solely on the shoulders of a Claimant to satisfy this Court that he has fulfilled the evidential requirements which would entitle him to compensation under this head of damages. Sadly, he has not cleared this hurdle.

11. I accept the submission of Counsel Ms. Dickens that there is no medical evidence to suggest that due to his injuries, Mr. Duhaney is no longer able to work. Further, there is no evidence of any attempt by the Claimant to seek suitable employment or any employment at all between December, 2003, when he was last paid by his

employer and the date of trial. From his own evidence under cross examination and in answer to questions from the Court, the Claimant admitted that he did not attempt to seek another job, because he was sick. In those circumstances, I find that there is no evidence before the Court for an award to be made for Loss of Earnings.

12. **Medical Expenses**

The two (2) items comprising this head of expenditure were monies paid to Dr. Calder in the sum of \$41, 480.00 and a sum totaling £818.00 in respect of expenditure purportedly incurred by Mr. Duhaney while overseas in London. Dealing with this latter item first, a receipt dated the 18th December, 2000, in the sum of £800.00 from the Willesden Dental Anaesthetic Clinic was tendered in evidence in respect of a "Cobalt chrome upper and lower partial denture." In his Witness Statement, Mr. Duhaney gave evidence that a family member paid for his airfare to go to England to have dental treatment, as he had lost several of his teeth as a result of the accident. He attended the Willesden Dental Anaesthetic Clinic in

December, 2000, where he obtained those dentures at a cost of £800.00.

13. I am satisfied on the evidence that this was a reasonable expense incurred by the Claimant or on his behalf, for which he is entitled to be compensated. With respect to the claim for a further sum of £18.00, no evidence whatsoever was led as to how that item of expense was incurred or in respect of what services or treatment or for whom that purported payment was made. That sum is therefore not allowed.

14. The other item claimed as Medical Expense is the sum of \$41,480.00. A receipt was tendered in evidence to support this item of expenditure by Mr. Duhaney, under the stamp of Dr. Donovan Calder, Consultant Ophthalmic Surgeon, which was dated the 10th May, 2007. The First Defendant's Counsel objected the figure claimed on the basis of it being too remote, as the alleged treatment by Dr. Calder took place on the 23rd April, 2007, almost ten (10) years after the accident. She argued that no nexus had been shown to link the alleged treatment to the

injuries sustained in the accident. She further argued that no medical report from Dr. Calder was tendered in evidence and that the medical evidence presented did not speak to any impairment of the Claimant's vision.

15. An examination of the Particulars of Injuries filed on Mr. Duhaney's behalf reveals a complaint of "Itching of right eye and foggy vision when he looks to the left." There is however no medical evidence provided to support this complaint, except a reference in those identical terms in Dr. Shaw's report of what he was told by the Claimant. Dr. Calder's receipt tersely describes the treatment for which payment was made as being in respect of "Laser/retina"

16. The evidence of Mr. Duhaney as to any injury to his eye is found in the following sentences in his Witness Statement Paragraph 28 "...I had a huge cut in my forehead and my face was bruised all over. I also received injury to my **left** eye "(emphasis mine).

Paragraph 54 "My vision deteriorated steadily subsequent to the accident and I can no longer see as I did before the accident. On May 10, 2007, I was examined by Dr.

Calder, an eye Specialist and I paid Forty-One Thousand Four Hundred and Eighty Dollars (\$41,480.00) for that consultation.”

Factually, this bit of evidence appears questionable, as the receipt which was tendered as an Exhibit, identified the treatment as having taken place on the 23rd April, 2007, and the purported payment being made on that date. That receipt does not speak to any examination being carried out on the 10th May, 2007, by Dr. Calder for which any payment was made.

17. It is also to be noted that Haughton Duhaney complained of injury to his **left** eye, while the pleadings filed on his behalf referred “itching of **right** eye and foggy vision.” The sum claimed for consultation with Dr. Calder apparently was in respect of retinal surgery, almost ten (10) years after the accident. However no medical evidence has been presented with respect to the necessity for this surgery, whether prior to or after the purported expenditure was incurred. Further, under cross examination, Mr. Duhaney testified that he was now blind

in one eye. This again is a complaint neither previously pleaded nor supported by medical evidence.

18. In considering all the evidence before the Court on this item of expenditure, I am not satisfied that there is sufficient evidence on a balance of probabilities to show a nexus between the alleged injury leading to this expense and the accident on the 2nd November, 1997. The sum claimed therefore is not allowed.

19. **Medical Reports**

The sum claimed for this item of Special Damages amounted to \$27,500.00. However, evidence was led only in respect of one payment of \$10,000.00 for the Medical Report of Dr. Cheeks. This receipt dated the 8th January, 2001 was tendered in evidence without challenge and is therefore allowed. The sum of \$10,000.00 is awarded under this item of the claim for Special Damages.

20. **Paid Assistant**

Mr. Duhaney gave evidence that due to the nature and extent of his injuries, a helper was employed to work with

him for a period of four (4) years up to the end of December, 2001. Due to financial constraints, he was unable to afford to the cost of a helper after that date. His claim for this item as set out in the Particulars of Special Damages amounted to \$229,500.00 being made up as follows:-

Paid Assistant 10/11/97 to 31/12/99		
111 weeks @ \$1,000 per week	-	\$114,000
2/1/2000 to 3/7/2001 -		
77 weeks @ \$1500 per week	-	<u>\$115,500</u>
		<u>\$229,500</u>

21. There is some inconsistency in Haughton Duhaney's own evidence as to the period over which the helper was employed. If as he asserted, the helper's services were engaged for four (4) years up to December, 2001, her employment would have commenced in January, 1998. The pleadings on his behalf however reflect a claim for reimbursement of this item of Special Damages from November 10, 1997 to July 3, 2001. Mr. Duhaney's evidence in his Witness Statement was that his wife tidied

him in bed for about two (2) months, as he was weak and unable to move around without assistance. However as she had to work, the helper was hired to look after him. That is more consistent with the helper starting to work with him as at January, 1998. His claim was filed in July, 2001, and yet his evidence is that the helper worked until the end of December, 2001. No amendment was sought to extend the period claimed for a paid assistant to December, 2001, nor was there on the pleadings any claim for this expense to be a continuing one.

22. I am satisfied on the evidence before the Court that in light of this severity of the injuries suffered and the Claimant's consequential disability, it was only reasonable for him to have obtained assistance for a substantial period while convalescing.

23 Ms. Dickens relied heavily on the medical report of Dr. Cheeks in which he gave his opinion that Mr. Duhaney "should be regarded as temporarily totally disabled for a period of 9 months immediately following the accident." In reliance on this, she argued that the Claimant had

failed to show any entitlement to a paid assistant for a four (4) year period. She further argued that neither of the other doctors, i.e. Drs. Donaldson or Shaw, in their reports spoke to any need for Mr. Duhaney to have someone to assist him. In a brief but fleeting concession, Counsel suggested that if an award were to be made, it ought not to be for a period in excess of eight (8) months. She went on however to maintain that as the Claimant had not produced any documentation or any witness to support this element of his claim, no award should be made in this regard.

24. I do not agree. As a noted Consultant Neurosurgeon, Dr. Cheeks' report has focused on his area of specialty. In giving his considered view of Mr. Duhaney's condition, he regarded him as temporarily totally disabled for a period of 9 months immediately following the accident. That does not mean, nor could it be taken to mean, that thereafter Mr. Duhaney was fully recovered. It is clear that after that initial period, in light of the severity of his injuries, the Claimant would still be disabled, if only

partially, due to the gravity and extensiveness of the injuries suffered.

25. The medical reports of Dr. Shaw and Dr. Cheeks were both prepared in the early part of 2001, between January and February, 2001. Despite the passage of over three (3) years between the accident and the dates of those reports, Mr. Duhaney's injuries were still a source of great pain, discomfort and inconvenience. It is therefore not unreasonable, in the circumstances of the present case, to understand the need for a paid assistant to aid the Claimant as he dealt, as best as was possible with these multiple injuries.

26. Based on the evidence before the Court, I am satisfied that the expense was in fact incurred and was reasonable and necessary and I award the sum of \$219,500.00 for the Paid Assistant, such award being made up as follows:

January, 1998 to December, 1999

104 weeks @ \$1,000.00 per week - \$104,000.00

January, 2000 – July 3, 2001

77 weeks @ \$1,500 per week - \$115,500.00
\$219,500.00

27. **General Damages**

A reading of the Particulars of Injuries outlined in the Claimant's pleadings as set out hereunder, can only but hint at the horrors and excruciating agony that Mr. Duhaney must have undergone consequent on that ill-fated journey so many years ago on the 2nd November, 1997. And for some of those wounds not even time can heal.

28. In his Medical Report of May 20, 1999, Dr. Donaldson, a Resident at the Faciomaxillary Department of the Kingston Public Hospital disclosed that his clinical assessment of Mr. Duhaney revealed the following;

- (i) Laceration vertical to forehead 4 to 5 cm.
- (ii) Fractured nose – frontal bones
- (iii) Fractured (undisplaced) zygomatic complex
(left side of face)
- (iv) Temporomandibular pain in left face
- (v) Cerebral concussion
- (vi) Avulsion (or tearing away) of left incisor
- (vii) Pain in nose and left ear

- (viii) Pain in lumbar sacral region of back
- (ix) Alert and conscious with headaches
- (x) Periorbital haematoma bilaterally

Mr. Duhaney underwent surgery on his naso-frontal bones on November 12, 1997 and between January, 1998 and February 1999, the extent to which he was able to open his mouth ranged between a high of 80% on 26th January, 1998 and 50% on February 8, 1999. Throughout that period, he was constantly in pain over his face and head.

29. Dr. Donaldson diagnosed the Claimant as having sustained fractured facial and nasal bones, massive pain in the left side of his face, trigeminal neuralgia i.e. pain in the 5th cranial nerve due to damage to the nerve. He was of the view that although Mr. Duhaney had improved since the accident, the damage to his left temporomandibular joint will restrict the opening of his mouth to 50%. He also opined that the trigeminal neuralgia or 5th cranial nerve damage from which he suffers, comes on without notice and lasts between one

mouth to 50%. He also opined that the trigeminal neuralgia or 5th cranial nerve damage from which he suffers, comes on without notice and lasts between one day to several days. There is no treatment available to deal with this condition, save for strong pain tablets which give little or no relief.

30. Dr. Hal Shaw also prepared a Medical Report dated February 9, 2001 on the Claimant's condition. On examination, he found an obvious asymmetry of Mr. Duhaney's face with flattening of his glabella and nasofrontal bone areas. He observed a 2.5 cm scar vertical at the glabella with his nasal bones showing a mild shift to the left. Although over three (3) years had passed since the accident, Dr. Shaw was still able to note possible old fracture site depressions at the left and right infraorbital bones. His report indicated paresthesia of the right cheek and upper lip over the distribution of the right infraorbital nerve and limitation of movement in Mr. Duhaney's left temporomandibular joint, with bone clicking and rubbing when opening his mouth. An

incisors, lower right 1st premolar and 1st molar, left 1st and 2nd premolars and molars.

31. Dr. Shaw was of the view that the Claimant sustained severe injuries to his head and face causing unconsciousness, fractured frontal-glabellar nasal bones, fractured left zygomatic (cheek) bones, undisplaced fracture of right infraorbital area causing crush injury of right infraorbital nerve, hence the numbness in his right face and upper lip, avulsion of upper and lower teeth and fractured left subcondylar area of the lower jaw.

32. In his report, Dr. Shaw stated that all the complaints of Mr. Duhaney could be substantiated by the types of injuries he sustained. He found that the infraorbital nerve injury causing paresthesia after 3 years was now permanent and so too were the articular sounds in his left temporomandibular joint. The swelling on and off of his right cheek showed recurrent sinusitis, which was a complication of the nasal fractures and this recurrence feature could be permanent. He estimated Mr. Duhaney's future medical costs at \$164,000.00 and advised that the

issue of cosmetic surgery to his nose and face was to be determined jointly by the Plastic Surgeon and himself.

33. Consultant Neurosurgeon Dr. Randolph Cheeks, after examining the Claimant some three (3) years after the accident, gave his opinion on Mr. Duhaney's condition in his Medical Report dated January 5, 2001. There he asserted that the injury to his head was a concussion of moderate severity, the impact being sufficiently severe to produce a laceration of his forehead and a fracture of the underlying frontal bone, in addition to rendering him unconscious for a period of time, which ended when he regained his senses lying in a hospital bed. According to Dr. Cheeks, impairment of recent memory function, which was one of Mr. Duhaney's complaints, is a recognized sequel to this type of head injury and in this instance his memory function is compromised by approximately **10%**, which is equivalent to **5% of the whole person**.

34. Dr. Cheeks confirmed that the area of impaired sensation on the Claimant's face indicated injury to the right infraorbital nerve, which was crushed against the facial

bones at the time of the impact and has healed with a traumatic neuritis which gave rise to the facial discomfort of which Mr. Duhaney complained. Dr. Cheeks agreed with Dr. Shaw that this is permanent and opined that this disability is rated at **2% of the whole person.**

35. Dr. Cheeks also found that Mr. Duhaney sustained a cervical whiplash injury at the time of the accident, the brunt of the neck injury being borne by the muscular and ligamentous structures in the neck, causing painful restriction of the range of motion of his neck. This has healed with some scarring but the disability is rated at **3% of the whole person.** Dr. Cheeks went on to refer to a readily visible scar on the Claimant's forehead of approximately 2", which constituted a cosmetic defect. He also described Mr. Duhaney's complaints of continuing headaches as being post – concussionial in nature, which were expected to subside in time.

36. In summary, Dr. Cheeks was of the opinion that Mr. Duhaney had a significant cosmetic defect related to

facial scarring as well as neurological disabilities. Combining these disabilities according to the AMA guidelines for the combined disabilities chart, he assessed the permanent partial disability of the Claimant arising out of his neurological injuries at **9% of the whole man**. In addition, he found Mr. Duhaney to be **temporarily totally disabled for a period of 9 months immediately following the accident**.

37. There can be little if any doubt that in the period after the accident and for some time thereafter, Haughton Duhaney experienced intense, unrelenting and constant pain as a result of his injuries. It is unfortunate that the latest medical report on his condition is dated February, 2001, some eight and a half years ago. However based on his evidence, those injuries still impact heavily on his life as regards continuing pain throughout his body, his inability to chew solid food without discomfort, being unable to exercise and take part in the game of cricket which he enjoyed prior to the accident, and for this loss,

inconvenience and discomfort he is entitled to be compensated.

38. His Counsel Ms. Rose-Green referred the Court to two (2) cases which she felt could be of assistance in arriving at fair and reasonable compensation for her client's injuries. There were **Isiah Muir vs. Metropolitan Parks and Markets Limited and Dennis Whyte** reported in Volume 4 of Ursula Khan's Recent Personal Injury Awards at page 185 and **Vin Jackson vs. E. Punancy D. Gibbs** reported at page 55 of Assessment of Damages for Personal Injuries compiled and edited by Justice Karl S. Harrison & Marc S. Harrison.

39. In the **Isiah Muir case**, the Plaintiff was struck with an iron pipe and chopped with a machete. His injuries included;

- (i) Unconsciousness
- (ii) Blow to left frontal region of head
- (iii) Central concussion
- (iv) Compound fracture of skull

He was hospitalized for 10 days. On neurological assessment over 3 months after the incident, he complained of headaches, loss of consciousness on 5 occasions with generalized stiffening of the body, cramp-like feelings in his left leg and change of personality and undue irritability.

40. Dr. Randolph Cheeks found the Plaintiff well oriented and fully alert, but anxious and depressed. His head had a healed scar over the left side of his forehead and Dr. Cheeks' impression was that he had suffered a concussion associated with a compound linear fracture of the skull vault and was experiencing part-concussional syndrome associated with post-traumatic epilepsy. Mr. Muir was given anti-epilepsy medication which he would require for life to control the epileptic seizures. It was the doctor's opinion that the headaches and irritability were features of post-concussional syndrome and would be resolved in the coming months.

41. Damages were assessed at \$1,500,000.00 in July, 1995 for Pain and Suffering and Loss of Amenities. That sum

updated to today's rate by applying the Consumer Price Index (CPI) for June, 2009 of 142.0 amounts to **\$6,792,091.80.**

42. The Claimant in the **Vin Jackson** case suffered a concussion, swelling of the head and basal fracture involving the temporal bone and contusion of the 7th cranial nerve – injury to the right facial nerve. His disabilities arising from the injuries sustained included paralysis of the 7th cranial nerve, reduced hearing, a twisted face, speech impediment, pains in the back, loss of concentration and impaired memory. General Damages were awarded in the sum of \$427,760.00 when damages were assessed in June, 1990. That award using the CPI for June, 2009, converted to \$10,490,832.00.

43. Mr. Duhaney's Counsel suggested that his injuries are more similar to those suffered by the Claimant in the **Vin Jackson** case and submitted that an award be made for Pain and Suffering in the sum of \$10,000,000.00.

44. This Court does accept that there are some similarities between the injuries outlined in the **Vin Jackson** case and those suffered by Haughton Duhaney. However the brevity of the report concerning the injuries in that case, as well as the lack of any breakdown in the award made for General Damages, make it difficult for that report to be of much assistance. It is not possible to ascertain from the report of that case, on which Counsel based her claim of \$10,000,000.00 for Pain and Suffering, how much of the award may have been apportioned to the several categories which make up this head of damages. Was there for example an amount awarded for Future Medical Expense, or Handicap on the Labour Market, or Loss of Future Earnings in that figure for General Damages? In the absence of such information, this authority cannot be wholly embraced as a guide in the present case.

45. Counsel, Ms. Dickens, in her response relied on the unreported cases of **Walter Amore vs. Ruel Sudu, Khan**, Volume 5 at page 185, **George Dawkins vs. The Jamaica Railway Corporation**, Khan, Volume 5, page

233 and **Charley Brown vs. Byron Cummings and Owen Miller**, Harrison's Assessment of Damages for Personal Injuries at page 61. In the **Charley Brown** case, the Plaintiff suffered lacerations and abrasions to the face, fracture of the left mandible and left cheekbone, multiple abrasions over the body, including the upper and lower limbs. As a result of the accident, the left side of his face was permanently deformed and he had a disability of the function of the jaw. The Court in January, 1992, awarded the sum of \$50,000.00 as General Damages for Pain and Suffering and Loss of Amenities. That sum converted to today's rate using the CPI for June, 2009 amounts to \$541,158.54. At the time Counsel made her submissions, in February, 2009, that award translated to approximately \$520,000.00.

46. The Plaintiff in the **George Dawkins** case was injured on the 11th March, 1989. He sustained fracture of the upper jaw with cranio-maxillary disruption, fractures of the inferior orbital area on the left side of his face associated with severe nose bleed, fracture of the lower jaw

(mandible), laceration and swelling of the tongue, lacerations above elbow and below the left eye and of the upper lip and unconsciousness. Mr. Dawkins was hospitalized for six (6) weeks and while there, he developed respiratory distress and a tracheostomy had to be done to facilitate his breathing. On the 29th March, 1989, he had an operation to stabilise his loosened upper jaw to the cranial base and his fractured lower jaw was immobilized by closed procedure. The fixation wires were removed on the 17th April, 1989. His residual disability included facial scarring below left eye 2 ½ " long, impaired sense of smell, residual facial asymmetry – the eye levels were not the same, left lateral rectis palsy, dilopia in looking up or to the left, and difficulty breathing through his left nostril. The Court found that there was no medical evidence that Mr. Dawkins was unable to do any work until June, 1984, (the date he actually started working again), nor was there any evidence that between April, 1989 and June, 1994, he sought any employment. The sum of \$450,000.00 was awarded for Pain and Suffering

1989 and June, 1994, he sought any employment. The sum of \$450,000.00 was awarded for Pain and Suffering and Loss of Amenities, which today converts to \$1,516,014.00.

47. The final authority relied on by Ms. Dickens was **Walter Amore vs. Ruel Sudu**. The Plaintiff was a farmer aged 63 years who was injured on the 29th September, 1992, when he fell from a motor bus through an open door. He suffered a fracture of the left frontal bone of skull, fracture of base of skull, leaking of cerebrospinal fluid from left nostril and injury to left eye and shoulder. He was hospitalised for 10 days at the Kingston Public Hospital and after being discharged, he received medical attention from Dr. Hal Shaw, ENT Consultant, Drs. John McCardy and Randolph Cheeks, Neurosurgeons and Dr. Franklyn Ottey, Consultant Psychiatrist.

48. Dr. Cheeks testified that Mr. Amore had a concussion so severe that the cerebral spinal fluid, normally contained in the head and spinal cord, escaped and flowed through the nostril. The fracture of the base of the skull exposed

sense of balance, as well as nerves involving recent memory function. Dr. Cheeks was of the view that Mr. Amore was unable to resume farming activities due to imbalance caused by dizzy spells. Dr. Hal Shaw reported a hearing loss that deteriorated to 50% of normal hearing, while Dr. Ottey diagnosed the Plaintiff as suffering from post-concussional disorder.

49. The learned trial Judge Mr. Justice Wesley James found that the injury to the skull was the most significant injury, which left Walter Amore still suffering from dizzy spells, loss of hearing quantified as being 4%, impairment of recent memory function and that the combination of these disabilities amounted to 17% of the whole person. The Court also found that the residual features of a post concussional disorder were chronic and caused an impairment of his psychological functions assessed at 40%. Based on the circumstances of that case, the trial Judge was of the view that Mr. Amore failed to adduce any evidence that he made any attempt to mitigate his loss. The sum of \$1,800,000.00 was awarded for Pain

and Suffering and Loss of Amenities, which when updated applying the CPI for June, 2009 converts to \$4,337,349.40. The Court also made an award for Handicap on the Labour Market.

50. Ms. Dickens submitted that the award for Pain and Suffering in the present case should fall within the range of \$520,000.00 to \$4,200,000.00 and she suggested the figure of \$2,300,000.00. There is no doubt, on the evidence provided by the medical specialists in their reports, that the injuries sustained by Haughton Duhaney were far more serious than those reflected in the cases involving **Charley Brown** and **George Dawkins**. The finding of the Court on the injuries suffered by Walter Amore was that the fracture of his skull was the most significant injury. Haughton Duhaney's injuries however were more extensive, although the percentage disability in his case was less than that assessed in the case concerning Walter Amore.

51. It is readily accepted that no two cases of persons sustaining personal injuries are exactly alike. And yet our

system of justice requires that, as far as is possible, there be consistency in awards involving similar injuries. The award of a sum of money as compensation for severe and extensive injuries suffered in an accident, as in the present case, can never put a person back in the position he was in prior to the accident, nor provide adequate solace for his misfortunes. The unenviable task of the Court is to arrive at a fair money value as redress for a claimant's afflictions, in effect doing what has been described as "measuring the immeasurable".

52. After careful consideration of the authorities cited by Counsel and having reviewed the evidence in this matter, I believe the sum of **\$8,000,000.00** to be an appropriate award for Pain and Suffering and Loss of Amenities.

53. A claim was made on behalf of Mr. Duhaney for Loss of Future Earnings in the sum of \$697,366.40. This figure was arrived at by applying a multiplier of five (5) years to his fortnightly salary of \$5364.36. Counsel for the 1st Defendant objected to any such sum being awarded on the ground that no medical report was tendered to

support a finding, nor was there any medical basis for any finding that Haughton Duhaney was unable to work as a result of his injuries, whether now or in the future.

54. I agree with the submissions of Ms. Dickens in this regard. It is not sufficient for a litigant to say "I am unable to work because of my injuries" and rely on this assertion as the foundation for his claim, either for lost earnings or for loss of future earnings. There must be some evidential basis for such an assertion to be accepted by the Court. No medical evidence was adduced to support such a contention. The fact is that the Claimant relied on medical reports dated the 5th January, 2001 and the 9th February, 2001, outlining his condition as assessed by the doctors over eight and a half years ago. In neither of those reports was there any indication that as a result of his injuries, Mr. Duhaney could not be gainfully employed.

55. The Medical Report of Dr. Donaldson dated the 20th May, 1999, some ten (10) years ago, did point out that based on the doctor's assessment of Mr. Duhaney's injuries at that time, his opinion was that the Claimant would not be

able "to function in his present capacity as a driver." However, that does not provide a sufficient platform from which to make the quantum leap to the position that he is unable to work at all. On Haughton Duhaney's own evidence, he made no attempt to obtain some or any form of employment, which, had he put himself on the labour market and failed to get a job, would have laid the groundwork for this head of damages. The claim for Loss of Future Earnings is therefore refused.

56. Ms. Rose-Green on behalf of her client also advanced a claim for future household help, on the ground that there was no guarantee that Mr. Duhaney's wife or children would be around to care for him in his twilight years. She contended that a sum of \$1500.00 per week be applied for an eight (8) year period, thereby arriving at the amount of \$624,000.00 to be awarded for this item of damages. Ms. Dickens again submitted, and I think quite properly, that this claim was speculative, as there was no contemporaneous medical report which disclosed that Haughton Duhaney was in need of such assistance. Mr.

Duhaney's evidence at the trial revealed that he had not employed a helper since December, 2001, as he was unable to afford that expense. He has not however provided any information as to the type or nature of assistance he presently requires as a result of the lingering consequences of his injuries. There is no evidence before this Court which would explain the need for such an assistant in the future, nor is there any recent medical evidence to disclose the necessity for such care. In the circumstances, Mr. Duhaney has failed to provide sufficient material to satisfy the Court of his entitlement to an award under this item of damages.

57. The Medical Report of Dr. Hal Shaw itemised the estimated costs of bridge replacement of missing teeth and physiotherapy for Haughton Duhaney at \$150,000.00 and \$14,000.00 respectively, making a total of \$164,000.00. This claim for Future Medical Expense was never challenged by the 1st Defendant and as such, **\$164,000.00** is awarded for this aspect of the claim. Although Dr. Shaw had indicated that cosmetic surgery to

Mr. Duhaney's nose and face were to be determined jointly by the Plastic Surgeon and himself, no evidence was ever led as to whether this consultation took place, nor was any claim made for such expenditure.

58. As indicated earlier in this Judgment, at the commencement of this trial, a Consent Judgment was entered in favour of the Claimant against the 1st Defendant. Damages are therefore assessed as follows;

Special Damages	\$229,500.00
	& £800.00

General Damages

(a) Pain & Suffering	
and Loss of Amenities	\$8,000,000.00
(b) Future Medical Expense	<u>\$ 164,000.00</u>
General Damages	<u>\$8,164,000.00</u>

Interest on the sums awarded as Special Damages at the rate of 6% per annum from the 2nd November, 1997 to the 21st June, 2006 and thereafter at the rate of 3% per annum to the date of Judgment.

Interest on General Damages of \$8,000,000.00 at the rate of 6% per annum from the 30th July, 2001 to the 21st June, 2006 and thereafter at the rate of 3% per annum to the date of Judgment.

Costs to the Claimant to be taxed if not agreed.