[2013] JMSC Civ 186

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009HCV02493

BETWEEN	**CEDRIC MORRISON**	**CLAIMANT**
A N D	**REGINALD WHITE**	**1ST DEFENDANT**
AND	**GUARDSMAN GROUP LIMITED**	**2ND DEFENDANT**

Mrs. Denise Senior-Smith instructed by Oswest Senior-Smith & Co. for the Claimant

Mr. Nigel Parke instructed by Elizabeth Salmon of Rattray Patterson Rattray for the Defendants

May 30 and 31, 2012 and December 4, 2013

Motor vehicle accident – Determination of liability – Contributory Negligence – Quantum of Damages

FRASER J

BACKGROUND

[1] On August 1, 2004 at about 2:35 p.m., an accident occurred between the Honda Night Hawk motor bike being ridden by the claimant, with his son as a pillion passenger, and the Suzuki Jimny owned by the 2nd defendant, that was being driven by the 1st defendant. The scene of the accident was DaCosta Drive, Ocho Rios, in the vicinity of the Jerk Centre. It occurred on the left side of the roadway as one heads west towards St. Ann's Bay.

[2] As a result of the accident the claimant suffered injuries for which he received treatment both at the St. Ann's Bay Hospital and privately. The claim for damages against the defendant for negligence was filed on May

12, 2009. The acknowledgement of service filed on behalf of the 2nd defendant indicates that the claim form and particulars of claim were received on May 20, 2009. The affidavit of service of Nevon Miller filed October 2, 2009 states that the first defendant was personally served with the claim form and particulars of claim on August 28, 2009. However the acknowledgment of service filed on behalf of the 1st defendant indicates that the claim form and particulars of claim were received by him on September 11, 2009.

[3] In the Defence of the 1st and 2nd defendants they allege that the accident was caused or contributed to by the negligence of the claimant.

THE CLAIMANT AND HIS WITNESS' VERSION OF EVENTS

[4] The claimant stated in his witness statement, which stood as his evidence in chief, that he and his son were travelling west on a motorbike along DaCosta Drive, Ocho Rios, St. Ann. On reaching the vicinity of the Ocho Rios Jerk Centre, the 1st defendant negligently disobeyed the road sign prohibiting U-turns and made an abrupt U-turn in the Suzuki Jimny he was driving, causing it to hit the claimant and his son from the claimant's motorbike.

[5] In cross-examination the claimant indicated that before he got onto DaCosta drive he had been travelling on Milford road, which is the road that would lead to Fern Gully. When he got onto DaCosta drive, after passing the traffic light on DaCosta drive, he was in the right of the two lanes for traffic proceeding west. He was travelling about 20 – 25 mph. The traffic was not busy and there was no vehicle in front of him.

[6] He was travelling nearer to the white line in the right lane — the white line he explained that is nearer to the island; but he had not yet passed the island. He indicated that while he was travelling in the right lane he realised a vehicle swung from the left side, down on him on the island

side. At the time of the collision, he estimated he was traveling between 15-20 mph. The collision occurred on the right side of the car, somewhere along the front of the wheel or the bumper. His motorbike got damaged in the accident and he and the motorbike fell on the left side. He indicated that from the point of the collision the bike slid a distance that he pointed out and which was estimated at about 15 feet.

[7] He acknowledged knowing that a "No U-turn" sign is on the island on DaCosta drive. He denied that he was travelling faster than 20 mph and that the accident occurred as he was overtaking the Suzuki Jimny. He however also stated that he never saw the motor vehicle at any time before the collision. It was only when he felt the impact. He also said he never heard any brakes squealing.

[8] He admitted that the bike was not registered nor insured and that he was not wearing a helmet. He however was wearing riding glasses. He stated that he knew it was against the law to operate the motorbike without it being registered or insured, but he still rode it.

[9] Oliver Morrison the claimant's son also gave a witness statement that was allowed to stand as his evidence in chief. In that statement he indicated that on or around 2:35 pm he and his father were travelling westerly on his father's motorbike towards St. Ann's Bay. He stated that they were not in a hurry and his father was travelling at a normal pace. When they were in the vicinity of the Ocho Rios Jerk Centre, he noticed a white Suzuki Vitara[1] attempting to make an abrupt U-turn along DaCosta drive. He said he realized the vehicle was attempting a U-turn when he noticed how close the vehicle was to them and he exclaimed to his father, "Yuh see that". He continued:

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[1] Mr. Oliver Morrison made this error as to the make of the defendants' vehicle in certain paragraphs of his statement i.e. stating it was a Suzuki Vitara rather than a Suzuki Jimny. However the first time he referred to the defendants' vehicle he called it a Suzuki 'Jimmy'. The references to 'Vitara' are clear errors. In any event there is no dispute as to the two vehicles involved in the collision.

> [B]efore I could say anything else the Suzuki Vitara [sic] had hit the motor bike on which I was travelling with my father. I was able to see vehicle [sic] before it actually hit the motor bike, but only for a few seconds. As a result, I anticipated the impact and I released my hands and my feet from the motor bike and from my father's waist. When I had done this I was released from the motor bike and flew over my father's head, landing about two feet away.
>
> While suspended I was able to see the motor bike skidding away from me, with my father on it.

[10] In cross-examination he stated that they had been coming from the road that leads to Fern Gully. When they came around the corner the road was empty so they switched lanes to the right lane. The bike was travelling about 15 mph. When he first saw the white Suzuki it was in the far left lane 5 - 6 feet from him and it was coming up beside them. It was coming down straight positioning to turn to go on the next side. They were in front of it by about a yard or so. The bike was in the right lane but more to the white line that separates the right lane from the left lane going in the same direction.

[11] The Suzuki then turned to the right causing the wheel and the light of the bike to hit into the right side of the Suzuki above the front wheel. About a second or so had passed between when he first saw the Suzuki and when the bike got hit. The bike flipped back facing the jerk centre. The Suzuki went back to the left after the impact. When the collision took place the bike had not yet passed the concrete island. After the collision he went up about 5 feet into the air flew over his father and landed about 2 feet away from where the collision occurred. When he was in the air he could see his father stuck on the bike and the bike skidded an estimated distance of about 4 feet and then stopped. The bike came to rest with part of it in the left lane and part of it in the right lane. The bike was an estimated 18 feet away when he landed.

[12] He denied the motor bike was going more than 15 – 20 mph and that his father was trying to overtake the Suzuki. He maintained that the Suzuki made an abrupt U-turn and that the 1st defendant gave no signal.

THE DEFENDANT'S VERSION OF EVENTS

[13] In his witness statement which stood as his evidence in chief the 1st defendant stated that he was assigned to Guardsman Alarms as an armed response patroller. On August 1, 2004 at about 2:24p.m. he received a dispatch from his duty officer to attend at New China Haberdashery in St. Ann's Bay. He left the Guardsman Alarms base at 158 Main Street Ocho Rios driving a right hand drive Suzuki Jimny registered to the 2nd defendant. Mr. Reginald Burke, also contracted to Guardsman, was travelling with him as a front seat passenger.

[14] The 1st defendant then stated in paragraph 4 of his witness statement:

> I was traveling along DaCosta Drive heading towards St. Ann's Bay. Upon reaching the vicinity of the Ocho Rios Jerk Centre and while in the right lane which was beside the island which divided the road in two, suddenly and without warning, I heard a loud sound and felt an impact to the right front wheel which caused the vehicle to lose control and veer to the left of the road on the same side as the jerk centre.

[15] He further indicated that his vehicle came to a stop by the curb in front of the Ocho Rios Jerk Centre. His vehicle sustained damage to the right fender, control arm and the front bumper which was partially torn off and hanging on the ground. In paragraph 7 of his witness statement he said, *"Based on how the accident happened, I am of the view that the bike man was trying to overtake me when the collision occurred."*

[16] His witness statement was amplified and he testified that the collision took place at the end of the median which is the partition in the middle of the road. He also explained that after the impact his vehicle was disabled and went across the road and stopped.

[17] When he was cross-examined he stated that he never saw the claimant before reaching the stoplight at DaCosta drive nor did he see him before he reached DaCosta drive. Further he stated that he didn't hear the bike coming before the collision.

[18] He testified that before and after the stoplight at the intersection of DaCosta drive and Milford road he was in the right lane. He was travelling at approximately 50kph.

[19] Where the accident occurred he stated the width of the road was standard size and he was travelling in the extreme right of the right lane, closer to the median than the line to the left. He estimated he was 3 feet or less from the median. He said that after one passes the median the lanes start to close into one lane on the way to St. Ann's Bay.

[20] He was aware that there are several signs including a "No U Turn" sign on the median but at the time of the accident he wasn't noticing if a "No U Turn" sign was there. The collision he stated took place after he had completed the median, but he didn't know where the motor cycle came from or what it was doing at the time of the collision. He knew it had not been beside him. However when he ended the median he felt the impact of the motor cycle to his right wheel and front bumper. Then his vehicle became disabled, veered to the left and the bike went straight on to the end of the "no zone"; the area with the lines in the road where persons are not to drive.

[21] When he was challenged that in his Defence filed he said that the bike had turned to the right he responded by saying that, if there was any turning it was his vehicle that turned to the left after it was disabled. Also in relation to the fact that in the Defence it was further stated that the claimant was negligent because he was attempting to overtake or turn, he said that he was clear that the bike hit into his right wheel and fender and tore off his bumper, so that was his opinion.

[22] He denied that he was not driving in the right lane and that his vehicle would need to have been slanted, as he attempted a U-turn, for the impact to his vehicle to have been as occurred.

SUBMISSIONS ON LIABILITY

Counsel for the Claimant

[23] Counsel for the claimant in her submissions, which I summarise, noted that the 1st defendant was unable to say how the accident occurred, but only proffered an unsubstantiated opinion in his Defence that the claimant was overtaking. Further that it was unlikely that the bike could have been travelling in the 3 feet space which the 1st defendant said was between his vehicle and the median. Critically counsel maintained that there had to be a turning of the Jimny for there to be the impact to the right wheel and bumper of the Jimny that occurred.

[24] She submitted the final resting place of the Jimny after the accident was consistent with the claimant travelling in the right lane closer to the white line that separates the right lane from the left lane. Then upon reaching near to the end of the median the Jimny which was travelling in the left lane made an abrupt right turn, attempting to make a U-turn, collided in the left side of the motor cycle and then veered to the left and collided in the curb wall of the Jerk Centre.

Counsel for the Defendant

[25] Counsel for the defendants highlighted some discrepancies and an inconsistency in the claimant's case and indicated these should point to liability being vested in the claimant, rather than in his clients. In respect of the inconsistency he noted that the claimant in his witness statement spoke to the 1st defendant making an abrupt U-turn, but that during cross-examination he twice asserted that he never saw the Suzuki vehicle either before him or beside him, but that he only knew about the collision.

[26] He then focussed on discrepancies in his view intrinsic to the version of events given by the claimant. *Firstly* that the claimant said he was travelling at 20-25mph while his son estimated their speed to be 15mph. *Secondly* that the claimant said nothing was before or beside the bike while his son said he saw the defendant's vehicle which came up beside them 5 to 6 feet away. Counsel submitted that the son as pillion rider would be in the same position as the rider and though he as pillion would be able to look around, there is no reason the claimant should not have seen as well, if that was the way the incident occurred, as the motorbike was equipped with rear view mirrors.

[27] Then *thirdly*, concerning the position of the motor bike at the time of the collision, counsel submitted that the claimant said the bike was closer to the island in the middle of the road while his son said it was closer to the white line separating the lanes going in same direction. *Finally* he pointed out that the claimant said after the collision the bike slid 15 feet while his son said it slid approximately 4 feet.

[28] In relation to the inconsistency highlighted, it is interesting that counsel for the defendant made the argument that the claimant spoke of what he did not see in reference to the 1st defendant making a U-turn. The 1st defendant however did the same thing. In his Defence he spoke of the claimant attempting to overtake him. However in cross-examination he admitted that that was only his opinion based on the fact of the collision and where on his vehicle it occurred.

ANALYSIS

[29] It seems two things are immediately clear. *Firstly* neither the claimant nor the 1st defendant was keeping a proper lookout or remaining appropriately aware of their surroundings, as neither saw nor heard the other before the collision.

[30] *Secondly*, I agree with counsel for the claimant that for the accident to have occurred as it did, with the bike hitting into the right front wheel and bumper of the Jimny, the Jimny would have to have been at an angle to the oncoming bike at the point of impact. The Jimny could not therefore have been proceeding straight ahead at the time of the impact, unless the bike turned sharply left into it. On no account has it been suggested that the accident occurred in that latter fashion.

[31] Before continuing I should point out that I do not find the discrepancies between the evidence of the claimant and his witness in relation to speed and distance to be material or significant. This is a case where the differences reflect varying individual perspectives and recollection, rather than proving to be an indication of a lack of forthrightness. Given the nature of this case, a 5 to 10 mph difference and a variation of 11 feet between witnesses, where these are both estimates in a dynamic situation, are by no reasonable measure significant.

[32] There are three main areas of disagreement. On the critical question of where on the road the impact occurred, everyone is agreed that the collision took place in the right lane. Where in the right lane is however the subject of dispute. The son of the claimant indicates it was closer to the white line that separates the right and left lanes proceeding west, while the 1st defendant said he was travelling in the right lane about three feet from the median and that the impact took place just after the median was passed. On the defence case therefore the accident would have taken place close to the middle of the road which separates traffic going in opposite directions.

[33] There is however some difference of opinion on the interpretation of the evidence of the claimant himself on that point. In cross-examination he said:

> As I was proceeding along DaCosta drive I was proceeding in the right lane and I get in collision with a vehicle I never see and never expect. I was nearer to the white line in the right lane. I hadn't passed the Island as yet. The white line I am referring to is the line that is nearer to the Island line.

To the court, as an attempt was made to clarify the point, he subsequently said this:

> The white line closest to where the collision occurred is the white line close to the island which divide the road from people driving on the right and driving on the left.

[34] Unfortunately the attempt at clarification did not go far enough. Counsel for the defendants and the court were left with the impression that the claimant was referring to a line next to the island (median) which separates west and east bound traffic, while counsel for the claimant maintained that the reference was to the white line that divided the left and right lanes proceeding west. An examination of the pictures marked exhibits H and I shows that heading west there is a white line to the curb on the left and a white line separating the left and right lanes but no white line immediately next to the island. However there is a white line in the middle of the road that separates lanes travelling west and east, which begins after the end of the island. Especially in light of the second disputed point I am about to move on to, there is thus no clear resolution.

[35] The *second* significant disputed point is whether or not the accident took place before the end of the median or just after. On the claimant's case it was before and on the defence case it was just after. This contention is also related to the *third* disputed point. On the claimant's case the 1st defendant was making a U-Turn at the time of the accident. The 1st defendant denies this. I however find that for the 1st defendant to be attempting to make a "U-Turn" before the median island was passed, does

not accord with common sense. While the court appreciates there would still be some forward motion even if a turn was being attempted, that would still likely mean that had the accident not occurred, the 1st defendant would have mounted the median.

[36] I have already found that for the accident to have occurred as it did the Jimny would have to have been at an angle to the oncoming motorbike. I also accept the evidence of the 1st defendant that he was responding to a call to go to a location in St. Ann's Bay. It therefore seems unlikely that he would have had any reason to be making a U-Turn that would take him in the opposite direction. What is clear however is that the Jimny was at an angle when it was struck by the motor bike and I accept the evidence of the son of the claimant that the Jimny was at first travelling in the left lane and then turned into the right lane. Whether it was an attempted U-turn or the 1st defendant drifted into the right lane as the roadway swings to the right, (as is clearly evident in the photographic exhibits H and I), I find the Jimny came from left to right into the path of the motor bike.

[37] There is some evidence that supports the 1st defendant's contention that the collision took place at the end of the median and close to the middle of the road that separates traffic moving in opposite directions. The defendant indicated that after the collision the bike slid into the "no zone" in contradiction of the evidence of the claimant's son who said the bike came to rest partly in the left lane and partly in the right lane. The second photograph in exhibit C shows the bike standing up just outside the "no zone" with a debris field just outside and in the "no zone". It was however not ascertained in evidence that the photograph showed the region where the bike stopped after the accident as opposed to it having been moved there subsequently. Perhaps more compelling is the location where the Jimny came to rest directly perpendicular to the curb wall near to the Jerk Centre. Though there is no expert evidence on the point, it would seem that the accident taking place in the far right of the right lane would afford

the turning radius necessary for the Jimny to end up in that position which would be more difficult to envision if the collision had occurred closer to the white line between both lanes heading west.

[38] There are thus a number of points of conjecture. I find however that despite the uncertainties that remain, the question of liability is answered by the initial two observations made in this analysis which I consider unassailable. Exactly where in the right lane the collision occurred or whether or not it was before or after the median was completed and where the bike came to rest, are not questions which I have to resolve to determine liability. Liability is determined based on the fact that both parties were negligent in failing to keep a proper lookout and by not maintaining a general awareness of their surroundings and the accident could only have occurred in the way it did, if the Jimny was turning into the pathway of the motorbike.

[39] I accept that committing the statutory breaches of driving an unregistered and uninsured vehicle is not a defence to a claim of negligence. Therefore, having considered all the evidence, I apportion liability for the accident 70 percent to the defendants and 30 percent to the claimant. The 2nd defendant would be liable by operation of the doctrine of vicarious liability the 1st defendant being the servant or agent of the 2nd defendant. I find the 1st defendant bears more responsibility for the accident as he turned into the path of the claimant's bike having failed to keep a proper lookout. I find the claimant has contributed to the accident as failing to keep a proper lookout he was unable to take steps such as tooting his horn, swerving or applying his brakes to seek to prevent the accident occurring. The claimant did not suffer any head injuries so his failure to wear a helmet is of no moment in this matter.

SUBMISSIONS ON QUANTUM

[40] The Particulars of Claim contain the following Particulars of Injuries:

(a) Tender swollen left wrist

(b) Lower chest wall tenderness

(c) Comminuted fracture of left distal radius

(d) Fracture of left metatarsals

(e) Fracture 8th left rib

[41] These injuries were all noted by Dr. Barnes who saw the claimant in the day of the accident in his medical report dated November 25, 2005. Treatment consisted of manipulation under anaesthesia and analgesics. He was admitted on August 1 and discharged on August 8, 2004. On follow up his fractures had healed and he was referred for physiotherapy.

[42] The report of Dr. Derrick McDowell dated July 7, 2010 referred to his examination of the claimant on November 19, 2009. It was noted that the claimant was right handed. He assessed the claimant as having:

(a) Malunited metatarsals of the left foot;

(b) Malunion of the left radius with positive ulna variance

[43] In terms of impairment the claimant was assessed as having 4% upper extremity impairment equivalent to 2% whole person impairment in respect of the left wrist and 13% lower extremity impairment equivalent to 5% whole person impairment in respect of the left foot. The total whole person impairment was stated as 7%. Counsel for the defendants noted that Dr. McDowell's report did not mention a fractured rib suggesting either that Dr. Barnes had made a misdiagnosis or at the time of the X-rays the rib had healed resulting in its failure to show up.

Special Damages

[44] Receipts from the St. Ann's Bay Hospital totaling $3,800, the cost of the medical report of Dr. McDowell in the sum of $16,000, the cost of physiotherapy $7,200 and $1000 for the police report were agreed. The cost of medication in the sum of $34,559.95 was however not agreed as the receipts are in the name of Frederick Morrison and no evidence was led to show a link to the claimant. Those costs were ultimately not pursued.

[45] A claim was also made for loss of earnings for the period August 2004 – November 2004 at a rate of $3000.00 per day. This claim was based on the claimant's evidence that he was a higgler and would ride his bike to Spanish Town, Ewarton and Magotty to sell clothes for both men and women. He testified to obtaining his wares from Panama, which he himself would sometimes travel to, from Florida or from other higglers.

[46] As submitted by counsel for the defendant the court accepts that the nature of business is such that there could also have been days when the claimant made less or more, or no sales at all. Though the claimant indicated he got receipts for the clothes he bought in Panama and also paid duty on them, as submitted by counsel for the defendant, he did not produce any receipt, plane ticket stub or even his passport to prove his travel.

[47] This court is aware of the long line of authorities leading from ***Walters v Mitchell*** (1992) 29 JLR 173 and including my own judgments in ***Shaquille Forbes (an infant who sues by his mother and next friend Kadina Lewis) v Ralston Baker, Andrew Bennett and the Attorney General of Jamaica*** 2006HCV02938 (March 10, 2011) and ***Omar Wilson v VGC Holdings Limited*** 2010HCV04996 (November 21, 2011), which establish that special damages may, in appropriate cases, be proven without receipts or other documentation. Appropriate cases are those where the

nature of the trade or business in which the claimant is involved, or the service that the claimant has accessed is such, that documentary proof of the income or expenditure associated with the practice of the trade or business, or the utilisation of the service is not usually provided. This is however not an appropriate case to apply that principle. As pointed out by counsel for the defendant, some documentation should have been available to support aspects of the claimant's claim. None was however provided. Further, I accept the submission of counsel for the defendant, that the claimant would have had a duty to mitigate his damage and there was no evidence that he could not have stayed in his hometown and sold goods, or otherwise engaged someone to sell them on his behalf. Accordingly I will make no award under this head.

[48] The award for special damages is therefore $28,000 less 30% = **$19,600.**

General Damages

[49] Counsel for the claimant relied on the case of ***Isiah Marriott v D & K Farms Ltd. & Evan Phipps*** C.L. 1990 M 278 Harrisons' Revised Casenote No. 2 page 382. In that case the plaintiff, a farmer and plumber, was involved in a motor vehicle accident in which he suffered fractures and dislocation of the bones of the right foot and toes; laceration of the right foot; haematoma and abrasions to the right elbow which developed into partial wrist drop. He was hospitalized and had surgery which involved open reduction and internal fixation of the fracture dislocations. He was given physiotherapy and a brace for the partial wrist drop. He was assessed as having a 10% permanent partial disability of the right foot with arthritic changes. He was awarded $120,000 for pain and suffering and loss of amenities which updates to $2,750,000. (October 2013). Counsel for the claimant suggested in her submissions that the instant case was more serious than ***Isiah Marriott*** and proposed an award of $3.5M which would update to approximately $4M (October 2013).

[50] Counsel for the defendants relied on three cases. ***Errol Finn v Herbert Nagimesi and Percival Powell*** C.L.1991 F 117 reported at page 66 of Ursula Khan's Recent Personal Injury Awards made in the Supreme Court (hereafter Khan's) Volume 4; ***Annette Christie v Nuitrition Products Limited & The Attorney General*** C.L.1990 C 249 Khan's Vol. 5 p. 106 and ***Joslyn James v Precast Concrete Limited*** C.L. 1996 J 040 Khan's Vol. 4 p. 111.

[51] In ***Errol Finn*** the 27 year old plaintiff suffered a compound fracture of the 5th metatarsal of the left foot and accompanying wound. At hospital his wound was stitched and his lower leg placed in a cast. He was given out-patient treatment thereafter. He was totally disabled for 26 days, then had 30% disability of his extremity for one (1) month, then 10% for a further month, with no final disability. In May 1994 the plaintiff was awarded general damages of $64, 365.00 which updates to $524,660 (October 2013).

[52] ***Annette Christie*** was a 36 year old plaintiff who slipped on a wet factory floor and was rendered unconscious. She also suffered a fractured left wrist, with X-Rays revealing a mis-aligned fracture of the distal 1/4th of the left radius with backward angulation and dislocation of the joint between the radius and the wrist. Surgical intervention led to plates being inserted. She did subsequent physiotherapy and after three sessions showed marked improvement. Examined almost two years later plaintiff complained of wrist pain. However X-Rays showed fractures well healed and plate in normal position. The plaintiff was diagnosed with carpal tunnel syndrome and surgical removal of the plate was recommended. However this was not done due to the plaintiff's impecuniosity. On final assessment the plaintiff had a 20% whole person disability which could have been reduced to 4% had she done the recommended surgery. As a result of her disability she could not perform manual labour. In March 2001 the plaintiff was awarded $450,000 which updates to $1,661,660 (October 2013).

[53] In ***Joslyn James*** the plaintiff a right handed 19 year old labourer, sustained injuries while cleaning an electrically powered mixer at work. He suffered a displaced fracture of the left humerus with deformity, degloving injury to the palm of the left hand, laceration to the left armpit and neck and abrasions of the back. He was hospitalized for just over two months and attended out-patient clinic fortnightly for two years. He was assessed as having a 17% disability of the whole person and could not lift any heavy weight or work as a labourer any more. The award of $500,000 made in April 1997 updates to $2,433,628 (October 2013). Counsel for the defendant submitted that ***Errol Finn*** was less serious than the instant case while the other two cases he cited were more serious. He proposed an award of $1.5M which updates to approximately $1,715,000 (October 2013).

[54] It should be noted at the outset of my consideration of the cases that in ***Isiah Marriott*** the defendant was not present nor represented. There would therefore have been no countervailing submissions or authorities to temper those advanced by counsel for the plaintiff. In any event I consider the injuries and resultant disability in the ***Isiah Marriott*** case more serious than those of the instant claimant.

[55] I agree with counsel for the defendants that ***Errol Finn*** is less serious than the instant case. I however find that the range of injuries and the resultant disability in the instant case is greater than that in the ***Annette Christie*** case, especially when the final opinion as to disability in ***Annette Christie*** is considered had the recommended surgery been performed. The instant case is however clearly less serious than the ***Joslyn James*** case. In all the circumstances using the cited cases as a guide and considering what is the appropriate award given the peculiar facts of this case I find the global award for pain and suffering should be $2,250,000. In light of the finding on liability, the sum to be awarded to the claimant is $2,250,000 less 30% = **$1,575,000.**

DISPOSITION

[56] I therefore make the following order:

ORDER

(a) **Special Damages** awarded to the claimant in the sum of **$19,600** with interest thereon at the rate of 6% per annum from August 1, 2004 to June 21, 2006 and at the rate of 3% per annum from June 22, 2006 to December 4, 2013;

(b) **General Damages** for pain and suffering awarded to the claimant in the sum of **$1,575,000** with interest thereon at the rate of 3% per annum from May 20, 2009 to December 4, 2013;

(c) **Costs** to the claimant in the same proportion as the liability determined, to be agreed or taxed.