COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2002/CLE/GEN/FP 277

BETWEEN

AUBREY ALVES

Plaintiff

AND

TROY GARVEY

1st Defendant

AND

GRAND BAHAMA SHIPYARD LIMITED

2nd Defendant

BEFORE	The Honourable Mrs Justice Estelle G. Gray Evans
APPEARANCES:	Mr R. Rawle Maynard for the plaintiff
	Mr R. Oneal Brown for the defendants
	2012: 26 and 27 November 2013: 29 January; 26 April
Written closing submissions: 2013:	30 January (the defendants) 26 February (the plaintiff)

JUDGMENT

Gray Evans, J.

1. This is an action for damages for personal injuries arising out of a traffic accident which occurred about 5:30 a.m. on 27 January 2001 when the plaintiff, a pedestrian along Settler's Way in the area of the YMCA in Freeport, Grand Bahama, was struck by a vehicle driven by the first defendant and owned by the second defendant.

2. The plaintiff commenced this action on 20 June 2002 by a specially indorsed writ of summons in which he alleges that the accident was caused by the first defendant's negligent driving and that he suffered personal injury, loss and damage.

3. The defendants deny the plaintiff's allegations of causation and negligence and say that the accident was wholly caused, or alternatively was contributed to, by the plaintiff's own negligence.

4. The only witnesses to the accident and at trial were the plaintiff and the first defendant. Each of them provided a witness statement which he confirmed as his evidence in chief.

5. In his undated and unfiled witness statement the plaintiff states, inter alia, as follows:

(1) My name is Aubrey Alves. I am the plaintiff herein. My date of birth is 17th June 1954.

(2) On the 27th January 2001 at 5:30 a.m. I left home at Clive and Columbus Avenue for the YMCA on Settlers Way to participate in a Walk-a-thon sponsored by St. Paul's Methodist College. At this time I was employed as a Teacher at St. Paul's Methodist College. I walked on Columbus Drive to Settler's Way and along Settler's Way on the left hand side of the street until I got to the Bus Stop in the vicinity of Kross Town Mall, I was about to cross the street towards the YMCA when I saw a vehicle approaching from the east. I stopped on the pavement in front of the Bus Stop, I cannot remember if the headlights were on but it was daylight. I was completely off the road when I saw the vehicle approaching. It was about 25 feet away. I heard no braking. I was wearing a burgundy sweat suit.

(3) I believe the driver was not paying attention. I cannot estimate the speed of the vehicle and I have no recollection of what happened after that. I was in a coma for fifteen days, when I came out of the coma I was in Doctor's Hospital. Dr. Robert L. Gibson was the attending physician. I experienced severe pain and had to be treated with pain killers either by injection or tablets form. Both of my legs were in casts and there were scars and stitches on my forehead and the back of my neck, I could hardly remember anything. Dr. Magnus Ekedede attended me for the head injuries. I remained in the hospital 28 days.

6. Under cross examination the plaintiff admitted that the evening before he and a friend had drank about half a bottle of Night Train wine and had something to eat before he went to bed at about 1:00 a.m. He denied that he was drunk at the time of the accident.He maintained that he was about to cross the street when he saw the lights from the vehicle driven by the first defendant, so he stopped on the bus stop and that "the rest is history".

7. The first defendant in his witness statement sworn on 8 November 2012 states:

(1) I am the first defendant herein and I make this witness statement to be used as my evidence-in-chief in these proceedings.

(2) The facts and matters of which I speak are within my own knowledge and I believe them to be true.

(3) At the time of the traffic accident, the subject of this matter, I was the Supervisor of Security at Grand Bahama Shipyard Limited, the Second Defendant herein, located Queens Highway, Freeport, Grand Bahama.

(4) On Saturday, 27th January 2001 at about 5:20 am, I was driving along Settlers Way, Freeport, Grand Bahama, in the left westbound lane with the intention of going to the Grand Bahama Shipyard. My speed at the time was approximately 25 mph.

(5) Settlers Way runs east to west. Atlantic Drive intersects Settlers Way in the vicinity of YMCA and runs north to south. There is a bus stop on the left side of Settlers Way about 10 feet before the intersection. The bus stop indents towards to allow buses to safely collect passengers without interfering with the flow of traffic. A curbing, approximately 4-6 inches in height runs along the street and separates the street from a grassy area that is immediately before the sidewalk. There was no pedestrian crossing in the immediate vicinity of the intersection and the bus stop.

(6) It was dark on the morning in question. Although there were street lights sparsely placed along Settlers Way there were no street lights immediately above the bus stop. I, however, had the benefit of the vehicle's light that was set to low beam.

(7) As I drove along Settlers Way, about 30 feet away from the bus stop. I noticed an individual walking on the left side Settlers Way in the opposite direction. He was in the vicinity of the bus stop. As I approached the bus stop, the individual who I now know to be the plaintiff, darted into the left lane in front of the vehicle. As this was happening, a car was travelling in the right lane. I was completely surprised by the plaintiff's action as nothing prevented him from seeing that a vehicle was approaching. I had little to no time to react. The plaintiff collided with the front portion of the vehicle hitting the front windshield and hood. I ran off the road and over the curbing as a result of this. I punctured the left front and rear tires in the process. The plaintiff was still on the hood as I came to a stop.

(8) Upon request an ambulance was called to the scene and the plaintiff was taken to the Hospital. While waiting for the ambulance I stayed with the plaintiff. It was cold that morning and I could tell that the plaintiff was cold so I took off my uniform shirt and covered him. I remember smelling a strong alcohol odor when I approached the plaintiff. This may explain why he darted into the street as he may have been drunk.

(9) The ambulance arrived at the scene and took the plaintiff to the Rand Memorial Hospital. My attorneys were able to obtain the ER Physician Clinical Notes that were made upon the arrival of the plaintiff at the

Hospital. The attending physician recorded that ***"[the plaintiff] breath smells alcohol."*** This confirms my suspicion that the plaintiff was drinking alcohol immediately prior to the accident.

(10) I remained at the scene of the accident until Police Officers arrived. I recall speaking to a male Police Officer. He handed me a document and explained that it is given at the scene of traffic accidents as a form of procedure. I explained to him what occurred and insisted that I was unable to react in a way to avoid the collision as the plaintiff darted in front of me.

(11) I later went to the Hospital to check on the plaintiff. I was told by a few persons there that the plaintiff had stabilized and was expected to be flown to New Providence.

(12) Although I was later charged with driving without due care and attention. I was never convicted of the offence.

8. Included amongst the documentary evidence was the following report from the Royal Bahamas Police force dated 27 August 2001 addressed to Simeon R. Brown & Co.:

"Simeon R. Brown & Company
P. O. Box F-40607
Freeport, Grand Bahama

Attention: Simeon Brown

Re: Report on Traffic Accident Involving
Troy Garvey and Aubrey Alves on January 27th 2001

At about 5:30 am Saturday January 27th 2001 a traffic accident occurred at the intersection of Settlers Way and East Atlantic Drive in the area of Kross Town Mall involving vehicle #17590 a green 1994 Plymouth Voyager owned by Floyd Werft and driven by Troy Garvey age 35 years of Holmes Rock and pedestrian Aubrey Alves.

Damages

Vehicle #17590 received damages to the front windshield, hood, the left front and rear tire.

Injuries

Pedestrian Aubrey Alves age 47 years was seriously injured and taken to the Rand Memorial Hospital where he was treated and detained.

Investigations

Police investigations revealed that Mr. Alves was standing in the area of the bus stop on Settlers Way when he was struck by van #17590 driven west along Settlers Way at an estimated 40 m.p.h. by Troy Garvey age 35 years of Holmes Rock.

As a result of the investigations, it was determined that Mr. Troy Garvey (the driver of vehicle #17590) is responsible for his accident and was charged for

Driving a Motor Vehicle Without Due Care and Attention, Contrary to Section 46 of the Road Traffic Act, Chapter 204.

This accident was investigated by P/Constable No. 1362 Storr and is pending trial.

Mr. Andrew Jones

Etc..."

9. Notwithstanding the police's determination that the first defendant was responsible for the accident, the first defendant insisted that he was not, and it is common ground that although he was charged for driving without due care and attention, he was never tried and/or convicted of any offence in connection with the accident. Further, although he admits to striking the plaintiff with his car, the first defendant said, as I understood him, that the accident was unavoidable because the plaintiff "darted" out into the street in the path of his vehicle before he could do anything to avoid the accident. It was also clear from the first defendant's testimony that he believed that the plaintiff "darted" or "staggered" into the road because he was drunk.

10. The issues that arise for consideration are: (1) whether the defendants were liable for the accident and if so what is the quantum of damages that should be awarded to the plaintiff; and (2) whether the plaintiff was responsible for or contributed to the accident by his own negligence.

11. The law regarding negligence is well settled. The onus is on the plaintiff to prove that the defendants owed him a duty of care, that the defendants breached that duty of care and that the plaintiff's injury, loss and damage resulted from such breach. "Negligence" was defined by Alderson B in the case of Blyth v Birmingham Waterworks Co. [1843-60] All ER Rep 478 as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do".

12. There can, in my judgment, be no doubt that the first defendant as the driver of a motor vehicle owed a duty of care to all other persons lawfully using the road along Settler's Way on the morning of 27 January 2001. The plaintiff, as a pedestrian, was one such person. Of, course, the plaintiff also had a responsibility to take reasonable care for his own safety.

13. The defendants allege that the plaintiff was wholly responsible for or contributed to the accident by his own negligence. In that regard, Mr Garvey alleges that the plaintiff "darted" into the road, crossing his vehicle, and that there was nothing he could do to avoid the accident, as there was another vehicle driving in the opposite direction.

14. According to Mr Garvey, the plaintiff collided with the left side of his vehicle and in response to counsel for the plaintiff's question: "Not in the front"? Mr Garvey respondent, "In the front of the left side".

15. On another occasion, in response to counsel for the plaintiff's question as to whether he ever applied brakes, the first defendant said: "I applied brakes just as he came into the vehicle. I started to apply brakes and the vehicle went over the curve. So it jump the brakes. After the collision it jump the brakes". That comment was followed by the following exchange between counsel for the plaintiff (Q) and Mr Garvey (A):

Q: The vehicle went over the curve?

A. Yes, sir. And you could not hold the brakes when it already hit the curve.

Q. This curve was on the left side of the road?

A. Yes, sir. I had no other choice but to maintain my position that way because of oncoming vehicle.

Q. So you turned to the left, you turned into the person?

A. Yes, because after he staggered into the road –

Q. I'll let you explain. You turned to the left, you didn't apply brakes, rather than turning away from the person. Now you can explain.

A. Let me explain, if somebody is coming into the road, I want you to just visualize, an oncoming vehicle is coming, after he staggered into the road I decided to move more to the left.

Q. Why?

A. To avoid him if he was continuing going across.

Q. If he was continuing –

A. If he was going to continue going cross I may have missed him. That was my decision at that time, as a driver of sound mind –

Q. Stop there for me. You turned to the left?

A. No, sir, I didn't turn to the left.

Q. How you got over the curve?

A. Sir, when he staggered in, he staggered in the front of the vehicle. Listen to me carefully; don't put words in my mouth.

Q. I didn't put words in your mouth –

A. I want you to understand what I am saying. When he staggered into the road, he came directly in front of the van, at the same time of the point of impact is when I turned a little to the left so it went over the curve.

Q. Why would you turn to the left?

A. Reaction.

Q. You just said to me you turned to the left because you thought he was in the middle of the road.

A. Yes, sir, he had already staggered into the road; that's what I am trying to say to you.

Q. But if the man just staggered, how far into the road did he stagger?

A. He staggered into the road.

Q. How much?

A. I can't say how much. When you say how much what you mean?

Q. How far into the road?

A. He came into the lane of the traffic.

Q. How far into the lane of the traffic was he?

A. I can't give you –

Q. Where did the collision happen, was it on the side by the curve or is it in the middle of the road?

A. It happened on the road.

Q. Now there was another vehicle coming in the opposite direction?

A. Yes. And if I had swerved away from him to the right, I would have definitely run into that next vehicle. And so therefore it wasn't even an option at that point and time right there.

Q. But why did you swerve at all, why did you swerve at all?

A. Reaction, sir, reaction. With him staggering into the road there was a reactive approach of myself; where he was so close to the vehicle, it just was a reaction to try and get away from him reaction, that is why.

Q. Your reaction was to turn the vehicle into him so you say?

A. No, sir.

Q. You did not turn away from him.

A. Yes, I did, tried to turn the vehicle to the left because he had staggered into the road. He had staggered off the curve – sir, listen to me –

Q. No, no, you listen to me. You saw him you say on the side of the road 30 feet away; you say he staggered into the left front side of your vehicle, and there is another vehicle coming. Therefore I am assuming that you are driving on the left side. If he staggered into the left, front of your vehicle, which could not be more than a couple of feet, since you were driving on the left because you saw the vehicle coming, why would you turn to the left and why would you run over the curve; your vehicle came to a stop over the curve, not in the road. Now explain that.

A. I already did. I already did explain it to you; you're still trying to –

Q. You reacted by turning the vehicle into the person you saw on the side of the road to the left and going over the curve.

A. Can I explain it one more time to you?

Q. You could have tried to stop, but you did not do it. Your reaction was not to apply brakes, but to turn the vehicle into the person standing on the side of the road.

A. No, sir, no, sir.

Q. Well please explain what else it was.

A. Let me see if I could be as clear of the whole situation again. As I approached, I was about 25 to 30 feet away when I saw the body walking on the side of the road coming up on the curve.

Q. Or, he was not standing, he was walking?

A. Could you let me explain it, sir, please? When he came off the grass, it came to where he stood up on the concrete curve, the curve. As I reach out to where actually he was standing, I watch, I was watching carefully as I was approaching and all of a sudden it was this stagger into the road. At that same point and time there was a vehicle on the right hand lane going east. And between the point of impact, it wasn't to a point where I would have had time to say slam brakes and stop; it was too close for me to even try to apply brakes. It was just that when he stagger and it hit, I end up going over the curve at the left side of the road, after the impact. That is what I am trying to explain to you.

The reason I end up over the curve is because it was so close to the point of juncture, the curve was right there. It wasn't that I was inside the bus stop, it was to the curve right there, right to the left of the road. That is what I was trying to explain to you, sir.

16. Frankly, I do not believe Mr Garvey's account of how the accident happened and I agree with counsel for the plaintiff that his explanation is incredible.

17. As indicated, there were only two witnesses to the accident – the plaintiff and the first defendant. When the police arrived on the scene of the accident, the plaintiff was unconscious; the first defendant was not. The police report indicates that "police investigations revealed that Mr Alves was standing in the area of the bus stop...when he was struck by van #17590 driven....by Troy Garvey...As a result of the investigations, it was determined that Mr Garvey is responsible for this accident and was charged..."

18. Although there were no other witnesses, and presumably he would have been the only person to give the police any information as to how the accident occurred, the first defendant denied telling the police that the plaintiff was standing in the area of the bus stop when he was struck by the vehicle driven by the first defendant. In, fact, the first defendant denied giving the police a "statement" and says that he and the police only had a "conversation during the course of the accident".

19. Surely, Mr. Garvey must have known that the contents of his "conversation" with the police immediately after the accident, where he was the only conscious witness, would be the basis of a report by the police on the accident.

20. The police report is dated 27 August 2001. This action was commenced in June 2002. The plaintiff's bundle of documents, including the police report, was filed 30 May 2011. The trial was conducted in November 2012. There is nothing in the report to suggest that the police smelled alcohol coming from the plaintiff or was told so by the first defendant. There is also no evidence that the first defendant ever challenged the police's findings that he was responsible for the accident, nor is there any evidence that he complained that the police neglected to note that there was alcohol coming from the plaintiff. Furthermore, if, as pointed out by counsel for the plaintiff, the first defendant was of the view that the report was erroneous he was at liberty to call the police as a witness to clear the matter up. He did not.

21. Indeed, it appears that the first defendant is relying on a comment made by a doctor in the Emergency Room at the hospital that he smelled alcohol on the plaintiff's breath. However, I agree with counsel for the plaintiff that there is no "evidence" that the plaintiff was drunk. As indicated, the plaintiff admitted having drank some wine the night before and even if there was the smell of alcohol on his breath, that is not evidence that he was drunk. In any event, as pointed out by Dr. Barnett in his report dated 23 December 2010, the "subjective smelling of alcohol was not confirmed by objective measurement of his blood alcohol level".

22. I, therefore, accept the plaintiff's evidence, which was corroborated by the unchallenged police report, that he was struck by a vehicle driven by the first defendant while waiting at the bus stop to cross the road and I find, that there was no negligence on the part of the plaintiff that caused or contributed to the accident.

23. In their defence filed 10 December 2003, the defendants admit that at all material times the first defendant was the second defendant's employee and that he was driving the second defendant's Plymouth Voyager Bus No. 17590 within the scope of his employment.

24. In the circumstances, I find that the accident was caused by the negligence of the first defendant as servant and/or agent of the second defendant and that the defendants areliable for the saidtraffic accident and the plaintiff's resulting injuries, loss and damage.

25. In his statement of claim the plaintiff particularized his injuries as follows:

> "Primarily, the injuries involved the skull and musculoskeletal system. There were signs of intracranial injury as manifested by altered mental status. There were injuries to both lower extremities, a compound fracture of the right tibia and fibula, and a closed comminuted fracture of the left tibia and fibula, multiple superficial contusions about the limbs and trunk, also a closed comminuted fracture of the right femur".

26. At the date of the accident, the plaintiff was 47 years old. At the date of the trial he was 58 years old. He is a school teacher.

27. The plaintiff said that although he returned to work at St. Paul's in September 2001, the pain, loss of memory and the effect of the pain killers which he had to take, diminished his efficiency as a teacher and he was terminated from St Paul's in December 2002.

28. The letter from Mrs Lin Glinton, Principal, stated that the plaintiff was terminated "as he was unable to perform his duties at the appropriate standard required of him".

29. The plaintiff said that after he was dismissed from St Paul's, during the afternoons until June 2003, he helped prepare for their exams those students whom he had signed up, while teaching at St Paul's, to take the BJC and BGCSE exams in June 2003. He said he was not paid by the students for this assistance. He said that between 2008 and 2009, he taught, on a part-time basis, for one year at Alpha Omega and in response to counsel for the defendant's question as to how much money he earned then, the plaintiff said: "I used to get paid $60.00 a

session; about four or five sessions a month; anyway two times a week for about eight or nine sessions a month".

30. The plaintiff earned $1,738.00 a month at St Paul's. At the date of trial he was earning $2,896.00, which he said he began earning in September 2012 as a teacher in Acklins. There is no evidence of how much the plaintiff earned during the period November 2011 and September 2012.

31. As for his injuries, the plaintiff's evidence is that while in Doctor's Hospital he was attended to by Dr Robert L. Gibson, an orthopedic surgeon and Dr, Magnus Ekedede, a neurologist, both of whom performed surgeries on him and with whom he had follow up visits. He later, in 2010, saw Dr David N. Barnett by order of this Court at the defendant'srequest.

32. The agreed medical reports revealed that the plaintiff suffered the following injuries as a result of the accident, and I so find:

(1) A fracture of his left parietal skull which resulted in a brain contusion and swelling of the brain.

(2) Fracture of his right second and third ribs;

(3) A closed, comminuted fracture of his right thigh bone, the femur;

(4) A compound fracture of the right leg bones, the tibia and fibula;

(5) A closed comminuted fracture of the left tibia and fibula;

(6) A shortening of the left leg of 2cm less than the right leg and with an angular deformity (bowing) of 15°.

(7) Multiple abrasions on all his limbs and trunk.

Pain and Suffering and Loss of Amenities

33. The plaintiff said that while in hospital he experienced severe pain and had to be treated with pain killers either by injection or tablets; both of his legs were in casts and there were scars and stitches on his forehead and the back of his neck. After he was discharged from hospital he returned to Freeport in the care of his Aunt, Claudette Pollard Mcrae, who, he said, cared for him because he could not do anything for himself. He attended the Rand Memorial Hospital for physical and mental therapy for about one month. He also saw a doctor in the United States where he had gone to recuperate. He returned to work at St Paul's Methodist College ("St Paul's") in September 2001. In October 2001, he returned to Dr. Gibson for follow up examination and evaluation. He was told by Dr Gibson that the fracture in his left leg had collapsed, causing the left leg to be shorter than the right and he was advised to use an elevated shoe, which he did. Dr Gibson also advised him that the only way to remedy the shortness of the leg would be by surgery although he said that Dr Gibson did not recommend the surgery because it would have been too painful. In 2009 the plaintiff was advised by Dr Gibson to continue using the elevated shoe in order to get relief for the pain in his back, caused by the shortened left leg. In addition to his left leg being shorter than the right leg, the plaintiff's right foot is also turned outward 60°. The plaintiff has steel in both legs and said he experiences pain when the weather changes. He said that his memory "goes and comes" and as a result he has to make a list of everything he has to do.

34. According to the plaintiff, he was still experiencing pain at the date of the trial. He said that the pain worsened if he sat too long.

35. According to Dr Gibson's January 2003 report, the plaintiff was evaluated on 19 December 2002 and at that time he complained of occasional lapses in memory as being the only sequel to his severe concussion and transient coma. By that time, the headaches and disorientation which he had previously experienced had subsided. Although there were no problems with his cervical spine, the plaintiff was still experiencing a recurrence of chronic lower back pain for several days and it was severe enough to warrant rest and medication. Dr Gibson recorded that the plaintiff walked with a noticeable limp; that there was a "15°varus deformity of the left tibia which contributed to a functional shortening of that limb"; a "30% restriction of left ankle flexion and extension when compared to the right side" and "a 3/8 inch shortening of the left lower extremity".

36. In his December 2009 letter to the National Insurance Board, Dr Gibson indicated that the plaintiff had been evaluated in August 2009 for continuing problems with the musculoskeletal system resulting from the aforesaid road traffic accident, at the time of which he had sustained a head injury and multiple long bone fractures. According to that report, the plaintiff had healed with a progressing degree of disability in both lower extremities; that he had acquired an inequality of leg length which caused episodic lower back pain and was worse with prolonged standing. He was limited in walking and lifting as well and had early signs of degenerative arthritis of the right knee and left ankle.

37. Dr Gibson's 2003 report concluded as follows:

> "As a result of his injuries, the plaintiff underwent several operative procedures and a prolonged painful convalescence. He has a persisting low back syndrome which may be due to several factors. The leg length inequality and subsequent limp may be a factor as well as the possibility of lower spinal column injury which [may] not be evident on plain x-ray films. The prognosis for painless recovery is extremely guarded at this time. He may require further surgical procedures to remove the hardware in the future; especially if he continues to have discomfort in the right hip. I have advised him to wear an appropriate lift to the left shoe in an attempt to affect some symptomatic relief of his back symptoms.
>
> He has approximately a 20% partial permanent disability at this time, and the severity of his injuries increase the potential for the development of the earlier onset of degenerative joint disease in those joints above and below his injuries."

38. In his letter dated 21 February 2002, Dr Edekede, the neurologist, reported as follows:

> "He sustained multiple orthopedic injuries which was surgically managed by Dr R. Gibson. He also sustained severe head injury and was unconscious for weeks in The Intensive Care Unit of P.M.H. The injuries to his head include multiple brain contusions which was managed medically. Even though Mr Alves was critically ill, he improved gradually and after weeks and months has completely recovered.
>
> He was finally discharged from my service (Neuro) on the 23rd February 2001. A repeat CT of brain (follow up) repeated on 27th November 2001 was normal. Mr Alves suffered a lot of pain and discomfort however right now neurologically he has improved to be normal with good prognosis."

39. Dr Barnett, the last of the doctors to see the plaintiff, saw him on 10 October 2010. Dr Barnett stated that his report, dated 23 December 2010, was based on his assessment of the plaintiff, a review of the radiographs taken since the accident and a review of other medical reports and notes.

40. According to Dr Barnett, the fractures of his second and third ribs suffered by the plaintiff were painful injuries, although he says being unconscious would have saved the plaintiff from some of the discomforts which were not associated with the dangerous collection of blood and air in his chest, when breathing would be compromised. Dr Barnett noted that in 2010 those fractures had healed, as the plaintiff had no chest pain at rest, when active or on deep breathing.

41. With regard to the fractures to the right femur, tibia and fibula, Dr Barnett noted that the latter two bones were fractured with wounds, which, he said, always worsen the outcome. He noted further that those injuries had healed well, except for a short period post surgery where the plaintiff had a high fever due to an infection, which, he said, soon settled with antibiotics. According to Dr Barnett, when the plaintiff saw him in 2010, motion in the joints in his right leg had all returned to normal through therapy and the plaintiff'sperseverance.

42. As for the left leg, Dr Barnett noted that the left leg fracture was markedly comminuted (multiple fragments), which collapsed as healing progressed, resulting in a shortening of that leg of 2 cm less than the right and with an angular deformity (bowing) of 15°. Dr Barnett opined that those two deformities and the weakened right limb threw abnormal stresses on the plaintiff's lumbar spine resulting in lower back pain, which he noted, improved with the fitting of a shoe lift on the left to equalize his gait and a course of physical therapy to enhance the strength and bulk in the lower limbs. He noted further, however, as the plaintiff testified, that the plaintiff still experienced some discomforts in his lower back in bad weather and that, similarly the lower limb bones also became tense with discomforts at those times. A phenomenon which Dr Barnett said should lessen as the plaintiff became more remote from the accident.

43. According to Dr Barnett, the plaintiff's left hip and knee showed a full range of motion, but the ankle motion was ten percent (10%) less than the right in dorsiflexion and plantarflexion. He noted that the metalwork (steel) remained in the plaintiff's right femur and he opined that if the plaintiff had any problems from them in the future, e.g. pain or infection, removal would be offered.

44. Dr Barnett also noted that the abrasions and wounds suffered by the plaintiff in the accident had, by October 2010, healed well and were minimally visible, but that he still had surgical scars, one 17 cm on his right lateral buttock and one 47 cmon his right thigh, the latter of which would be visible for the remainder of his life, but which could be camouflaged under his pants.

45. Dr Barnett noted further that the plaintiff's injuries, being multiple, threatened his life, as he could have bled to death, as evidenced by the need to transfuse him with multiple units of blood. However, he opined that the plaintiff's fitness, as he walked regularly, was probably the parameter that enabled his vital organs to continue functioning at the time of the accident with such great blood loss.

46. Dr Barnett noted further that although the plaintiff was one hundred percent (100%) disabled at the time of the accident, by October 2010, his recovery had stabilized at a permanent disability of fifteen percent (15%).

47. According to Dr Barnett, the plaintiff will face difficulties in the future, some of which are listed below:

(1) He needs to keep wearing a shoe lift in his left shoe to aid the proper mechanical function of his lumbar spine, as limping is lessened.

(2) The likelihood of another surgery to remove the hardware if complications arise in his right femur.

(3) The enhanced risk of developing post traumatic arthritis in the joints of his lower limbs, with the most likely joint being the left ankle.

48. The plaintiff claims special and general damages against the defendant.

49. Special damages are the actual pecuniary loss sustained by the plaintiff at the date of the trial or hearing on the assessment of damages.The plaintiff, in his statement of claim,set out the following particulars of special damages:

(1) Incidental expenses, travelling expenses and damaged clothing.
(2) Prescription drugs.
(3) Nursing Care.
(4) Hospital.
(5) Medical doctors.
(6) Loss of earnings.
(7) Remuneration of aunt for care and assistance at home.
(8) Therapy and tests.
(9) Interest on above sum.

50. In his undated and unfiled witness statement the plaintiff stated: "Annexed hereto is statement of special damages". No statement was exhibited to the witness statement in the plaintiff's first bundle of "witness statements and documents" filed 30 May 2011, but one was included in the bundle filed 22 November 2012. An identical statement had also been exhibited to the plaintiff's supplemental affidavit filed on 22 January 2009 in support of an application for interim payment. In that document the plaintiff provided the following information:

Statement of Special Damages

1.	Incidental expenses, Travelling and damages to clothing	$ 6,466.00
2.	Prescription Drugs	$ 907.00
3.	Doctor's Hospital	$ 28,579.00
4.	Medical Doctor's	
	(1) Dr. Magnus Ekedede	$ 4,340.00
	(2) Dr. Gibson	$ 8,880.00
	(3) Dr. Neymour	$ 2,880.00
	(4) Dr. Bascom	$ 2,280.00
5.	Rand Memorial Hospital	$ 3,409.00
6.	Princess Margaret Hospital	$ 1,604.00
7.	Sunrise Medical Centre	$ 500.00
8.	Loss of Earnings	
	(a) Total disability Nine (9) months January 27th to September 2001 $1,828.00 per month	$ 16,452.00
	(b) Loss of earning capacity 75% multiplier of 12 at annual salary of $21,936.00	$197,424.00
	(c) Remuneration of Aunt for care and Assistance at home	$ 11,050.00
Total		$284,811.00
Interest at 10% for Six (6) years $199,367.00		

51. There is no evidence that the special damages were agreed or, indeed, whether there was any attempt to do so.

52. No evidence was led with respect to items 1 and 2 of the aforesaid statement of special damages,that is, the claims for incidental expenses, travelling,damage to clothing and prescription drugs.

53. With respect to items 3, 4, 5, 6 and 7 of the aforesaid statement, that is, claims with respect to charges by the hospitals and doctors totaling $52,472.00, included amongst the plaintiff's bundle of documents were a number of invoices and statements which the plaintiff identified as representing expenses incurred by him with those persons and/or facilities, totaling $52,472.00.

54. With respect to item 8(a), of the aforesaid statement, the plaintiff claimed $16,452.00 as loss of earnings for the nine months' period, January to September 2001. His salary is therein stated as $1,828.00 per month. However, the plaintiff's evidence is that his salary at St Paul's was $1,738.00 per month and by letter dated 24 March 2003 Mrs Lin Glinton, Principal of St Paul's, wrote to counsel for the plaintiff indicating thatthe plaintiff had, at September 2001, lost five months' salary as a result of the accident. It appears that that letter superseded the letter dated 17 July 2002 in which Mrs Glinton had indicated that the plaintiff had "experienced four month's loss of salary" in the amount of $6,801.26. Clearly the plaintiff's claim for nine months' loss of salary has not been made out.

55. It is unclear how the plaintiff arrived at the claim for $197,424.00 for "loss of earning capacity 75% multiplier of 12 at annual salary of $21,936.00" at item 8(b) of the aforesaid statement. The evidence is that the plaintiff returned to work at St Paul's in September 2001 and he continued working there until December 2002 when he was terminated because he was "unable to perform his duties at the appropriate standard required of him". There is no evidence that he lost any salary between September 2001 and December 2002. The plaintiff said that he began working with the Ministry of Education in 2011 and at the date of the trial he was teaching Art at Selena Point All-Age School in Acklins, having been assigned there with effect from 12 November 2011. At the time he was earning $2,896.00 per month, more than the $1,738.00 per month he had earned at St Paul's. No evidence was produced for any loss of income between December 2002 and November 2011, although the plaintiff said he had only worked for a short period during that time, between 2008 and 2009, when he worked with Alpha Omega Secondary School on a part-time basis. According to the plaintiff, he expects to work until he reaches the retirement age.

56. As proof of his claim for $11,050.00 atitem 9 of the aforesaid statement, that is, home care and assistance by his aunt, the plaintiff produced a document purportedly prepared by his aunt, Claudette McRae, in which she verified that she received the sum of $11,050.00 from him for home care rendered to him "during the time of his illness, March 13, 2002 to August 31, 2002". However, I note that by 13 March 2002, the plaintiff had already returned to work at St Paul's and it is unlikely, in my view, that he would have required that level of home help at that time.

57. It would appear from the foregoing that the only items of special damages which the plaintiff "proved" are those relating to his medical expenses for services rendered by his doctors and the hospitals, which total $52,472.00, and five months' loss of salary, which, based on Mrs Glinton's 17 July 2002 letter, would, by my estimation, have been approximately $8,501.00.

58. However, counsel for the defendantsobjected to an award being made to the plaintiff with respect to any of his claims for special damages as, in his submission, the plaintiff failed to

plead the same. In support of that submission counsel for the defendants relied on the cases of Ilkiw v Samuels [1963] 2 All ER 879 andHeastie's Cleaners Ltd (c.o.b. Heastie's Lumber and Building Supply) v Duffy[1994] BHS J. No. 7.

59. In response to that submission, counsel for the plaintiff submits that special damages were pleaded in the statement of claim and that a printed copy of the details and supporting documents were served on the defendant's attorneys "and updated". In his submission, special damages are "ongoing" and, therefore,"cannot be quantified in total upon the filing of the writ or statement of claim". For that reason, counsel submits, the plaintiff's pleaded his special damages in the manner recommended in the commentary at page 15 of Personal Injuries Pleadings by Patrick Curran, Sweet & Maxwell 1995and the Queen's Bench Division Practice Direction (Damages: Personal Injuries) [1984] 1 WLR 1127.

60. I note here, however, that the commentary cited relates to RSC Order 18 rule 12(1A) of the English Rules which does not appear to be a part of the Bahamian Rules.

61. In any event, it is settled law that special damages must be specifically pleaded, particularized and, of course, proved. See Diplock, L.J. in the case of Ilkiw v Samuels *supra.* See also the Court of Appeal case of Heastie's Cleaners Ltd (c.o.b. Heastie's Lumber and Building Supply) v Duffy *supra* in which Melville P. restated the position thus: "There can be no doubt that special damages have to be specifically pleaded and proved in an action to recover damages for personal injuries".

62. A proper pleading and particularization of special damages would, in my view, require not only a listing of the heads of special damages being claimed, but also particulars of the amounts claimed and where those amounts, such as medical expenses or loss of wages, may be "ongoing" as counsel for the plaintiff argues, then a note indicating that certain amounts are "continuing" may also be included in the statement of claim. Further, an application for leave to amend the statement of claim maybe made at any time to include the actual amount known at the time of such application. In that regard, I note that the amounts for the various heads of special damages set out in the statement of claim have not changed since 2009 and according to the invoices produced, most of the expenses would have been known by the plaintiff prior to the commencement of this action.

63. In the case of Ilkiw v Samuels *supra*, special damages were pleaded and particularised at the sum of £77 odd. Shortly before the trial, the special damage (as so particularised) was agreed at £77 by letter. Evidence was called at the trial the effect of which was that the plaintiff had sustained special damage of a very much larger sum. This was not pleaded, and no application to amend the statement of claim to plead it could be made because of the agreement already arrived at the sum of £77 for special damage. Although the evidence about the loss of earnings in excess of £77 was admissible, it was not as proof of special damage (which had not been pleaded) but as a guide to what the future loss of earnings of the plaintiff might be.

64. Per Lord Diplock at page 80:

> "Special damage in the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularized...It is plain law—so plain that there appears to be no direct authority, because everyone has accepted it as being the law for the last hundred years—that one can recover in an action only special damage which has been pleaded, and, of course, proved."

65. In my view, a statement of damages annexed to an affidavit or a witness statement is not a pleading for the purpose of RSC Order 18 rule 12 of the Bahamian Rules. Consequently,

as no application for leave to amend his statement of claim was made by or on behalf of the plaintiff to properly plead and particularize his special damages, I am constrained to agree with counsel for the defendant. The plaintiff cannot be awarded special damages that have not been pleaded or particularized. The plaintiff's claim for special damages is, therefore, refused.

66. General damages fall into two categories: (1) non-pecuniary loss (i.e. pain and suffering and loss of amenities); and (2) pecuniary loss (i.e. loss of future earnings, earning capacity, future medical care).

67. It is accepted that whenassessing damages for pain and suffering and loss of amenities, the court must have regard to comparable awards within The Bahamas for comparable injuries so far as possible. Courts in The Bahamas have also looked for assistance to awards in similar cases emanating from otherCommonwealth jurisdictions.

68. In that regard, Georges CJ in Matuszowicz v Parker [1987] BHS J No. 80, said at paragraph 16 that:

> "The courts here are faced with the task of setting standards in a situation in which little guidance is available. Until a pattern of local decisions emerges it appears to me sensible to look to the English decisions. They should not be treated as inflexible guides. There is no income tax in The Bahamas. The cost of living is somewhat higher than in Great Britain. It would also be true to say that expectations in relation to awards are higher because of awareness of the very high awards common in the United states of America – awards which incidentally have built into them the cost of counsel paid on a contingency basis. English awards could therefore be treated as a guide but increased as seems appropriate, having regard to local conditions."

69. Sixteen years later, in the case of Grant v Smith [2003] BHS J No. 80, relied on by counsel for the defendant, the Court of Appeal reconsidered the approach of adjusting awards upwardly and held that because the cost of living in The Bahamas was, at the time, lower than that in the United Kingdom, awards from the United Kingdom should be adjusted downwards as opposed to the position stated by Georges CJ in Matuszowicz v Parker *supra*. In that regard, Osadebay AJ, opined at paragraphs 30 and 31 as follows:

> "It is noteworthy that in these cases referred to by Mr. Tynes, the court recognized that at the time of the award the cost of living in The Bahamas was higher than in Great Britain and so adjustments were made upwards using the English awards as a base. Whatever may have been the true position as to the relative cost of living as between the Bahamas and the United Kingdom and whatever views may have been previously expressed, it is now generally accepted that the cost of living in London, England is now higher than in The Bahamas".

70. In that case, the Court of Appeal reduced the award from $24,000.00 to $10,000.00.

71. There is no evidence that the position stated by Osadebay J. has changed.

72. It is accepted that where,as in this case,there are multiple injuriesaffecting different parts of the body, each injury must be taken into account in assessing the global sum. In that regard, I am guided by the procedure recommended by the English Court of Appeal inBrown v Woodall [1955] PIQR Q36, where Sir John May saidat page Q39:

> "In this type of case, in which there are a number of separate injuries, all adding up to one composite effect upon a plaintiff, it is necessary for a learned judge, no doubt having considered the various injuries and fixed a particular figure as reasonable compensation for each, to stand back and have a look at what would be the global aggregate figure and ask if it is reasonable compensation for the totality of the injury to the plaintiff or whether it would in the aggregate be larger than was reasonable"?

73. No local cases were referred to by either counsel.

74. However, counsel for the plaintiff argues that the plaintiff's injuries are permanent which, he says, will result in earlier retirement and pain and suffering for the rest of his life and that he is unable to enjoy the amenities, which he previously enjoyed, such as participating in sports and walkathons.

75. Counsel for the plaintiff submitted that the plaintiff should be awarded $150,000.00 for pain and suffering and loss of amenities and $100,000.00 for loss of future earnings and earning capacity, for a total award of $250,000.00, whereas counsel for the defendant submits that a global sum of $50,000.00 would be a reasonable sum for general damages in this case.

76. Mr Maynard for the plaintiff relies on the cases of S. v Methodist Homes for the Aged [2000] C.L.Y. 1515 and Smee v Adye [2000] EWCA Civ 146, and Mr Brown for the defendants cited several cases where the claimant suffered injuries similar to those suffered by the plaintiff.

77. In Mr Maynard's submission, the plaintiff's age and injuries in S v Methodist Homes for the Aged *supra*were similar to those of the plaintiff's in this case and he pointed out that the plaintiff in that case was awarded £60,000.00 for general damages, which, he says, is equivalent to $180,000.00, taking into account inflation and conversion. In Smee v Adye *supra,* general damages were agreed at £45,000for pain and suffering which counsel for the plaintiff says is equivalent to $120,000.00,again taking into account inflation and conversion.

78. In the case of S v Methodist Homes for the Aged, the claimant, S, a male aged 44 at the date of the accident and 49 at trial, suffered a fractured skull, bruising to the left temporal lobe of his brain, a ruptured left tympanic membrane and damage to his olfactory nerve following a fall from a ladder during his work as a gardener/handyman. S was left with daily headaches, bilateral anosmia, a significant loss of cognitive function, a change of personality, depression and irritability. Thirteen weeks after the accident S returned to work. He had difficulty coping and was only able to work for one to two weeks. He then had a breakdown and was unable to continue. He had not worked since. The main issues on the assessment of damages were a claim for past and future care, a claim for cost of future medical treatment and a claim for accommodation made on the basis of Roberts v Johnstone [1989] Q.B. 878 applied. Liability was in dispute, but a settlement was agreed and approved by the court.

79. In the case of Smee v Adye, the plaintiff was 39 at the time of the accident and 43 and a quarter at the date of trial. He was a chartered accountant and a partner in his firm. He was involved in a road traffic accident in which he suffered a head injury; multiple facial fractures; fractures of the right arm; fracture dislocation with multiple fractures requiring fixing with plate and pin; cuts and scarring to legs and knees and serious injury to the right foot.

80. In support of his submission that the global award of $50,000.00 would be reasonable, counsel for the defendants cited a number of cases from outside of this jurisdiction and suggested awards comparative thereto.

81. For example, in respect of the plaintiff's fracture to the right second and third ribs, counsel for the defendants suggest between $4,001.68 and $4,416.83 and in support thereof,

he relies on the cases of SJ v OMBC (2012) and Hodgkiss v Brassett (1991). In SJ v OMBC, the claimant, a 47 year old-man, suffered two fractured ribs, bruising and lacerations, and shock and distress. It was anticipated that his symptoms would resolve by three months after the accident. He received general damages in the sum of £2,046.80 (an out-of-court settlement). In Hodgkiss v Brassett (1991), a 40 year old male, suffered a fracture to his ninth rib. His chest was bruised. He lost no time from work although he was unable to carry on his main hobbies of football refereeing and gardening. He was in intense pain for several weeks. At date of the assessment he suffered no continuing symptoms except after particularly strenuous exertion when gardening or refereeing. The site of the injury was painful to hard palpation or if he knocked it, in which event he would take prescribed medication. He was awarded £1,500.00.

82. In respect of the plaintiff's head contusion counsel suggests between $5,963.06 and $7,770.19 and relies on the cases of Smith v West Coast Trains Ltd (2001) and Holland v Holland (1981). In Smith v West Coast Trains Ltd. (2001), the plaintiff was a former computer programmer, aged 23 at the date of the accident and 25 at trial. He suffered diffuse cerebral concussion and received a small cut to the head not requiring stitches. Two years after the accident he had fully recovered with only occasional headaches. There was no scarring and no other symptoms. He was awarded £3,500.00 for pain and suffering and loss of amenities.In Holland, the claimants were 70 years old (male), 65 years old (married female) and 32 years old (married female) respectively. The 70 year old suffered a broken rib and was awarded £5,000; the 65 year old sustained a compound fracture of tibia and fibula and was awarded £2,750; and the 32 year old suffered a head injury and was awarded £3,800.

83. In respect of plaintiff's right femur, tibia and fibula fractures counsel suggests between $4,315.37 and $6,276.90 and relies on the cases of Nelson v Heald (1985) and Holland v Holland (1981). In Nelson v Heald (1985), the claimant was 20 years old male who sustained fractures to the lower third of his tibia and fibula of the left leg. He had an ugly discoloured scar and suffered pain at the end of the working day. He found running awkward but could still play football and cricket and enjoyed dancing. Osteoarthritis was unlikely and pain would lessen as time passes. He was awarded £4,000.

84. As for the plaintiff's left leg fracture, counsel for the defendant relying on the cases of Orchard V Williams & Sons Ltd (1984) and Joyce v Carrigan (1987) suggested an award of between $41,637.82 and $45,026.28.

85. Orchard v Williams & Sons Ltd (1984) – the plaintiff was a 42 year old dock worker who suffered a comminuted fracture of the right tibia and fibula, the effects of which was that his leg bowed backwards, was unsightly, shorter by an inch and a raised shoe had to be worn. He was unfit for heavy lifting work or work requiring agility, but could manage heavier duties than he preferred. He was awarded £10,000 for general damages £6,000, of which was for pain suffering and loss of amenity and £4,000 was for disadvantage in the labour market.

86. Joyce v Carrigan (1987) – the plaintiff, a female was 53 years old when she was struck by a truck sustaining a comminuted fracture of the upper half of her tibia, a fracture of the head of her fibula and a wound on the inner aspect of the left knee. The leg healed well, but there was a slight shortening of the leg, which resulted in a limp. Nerve damage caused numbness in the front of the leg affecting mobility. Her hobbies were seriously affected. She was awarded general damages for pain and suffering and loss of amenities in the sum of £7,500.

87. It is well settled that in most personal injuries cases, the amount of the award for general damages usually turns on the type and seriousness of the injury, as well as the loss of amenities which the plaintiff has suffered, with each case being decided on its own facts.

88. I am satisfied on the plaintiff's evidence, which I accept, that he suffered multiple injuries; that those injuries were serious and that although many of the wounds/injuries have healed, the medical evidence is that he had to undergo several operations and he endured a prolonged painful convalescence. In 2003, Dr Gibson's indicated that the prognosis for painless recovery was guarded and in 2010, Dr Barnett, opined that the plaintiff would continue to have difficulties in the future. In that regard, one of his legs will always be shorter than the other, which causes him back pain when he stands for long periods of time. He has to wear a shoe lift. He has steel in both legs and he still experiences pain, particularly when the weather changes. He walks with a limp. He has scars which he has to cover, especially the one on his thigh. He is at risk for developing post traumatic arthritis in the joints in his lower limbs, with the most likely joint being the left ankle. He may even have to have surgery to remove the steel from his legs. His right leg is bowed outward at 60° and he has a permanent disability of 15%. The plaintiff said he was coping with the situation but his back pain was extremely severe and as a teacher having to move around at school, he experiences some discomfort.

89. So, having regard to all the relevant factors, including the plaintiff's age, his testimony with regard to his injuries, pain, treatment, loss of amenities, the reports of the various doctors, the submissions of counsel and authorities cited by both sides (all of which I have considered), and having regard to the fact that the plaintiff suffered multiple injuries, and bearing in mind the dicta of Sir John May in Brown v Woodall supra, I consider the sum of $100,000.00 reasonable compensation for the plaintiff's pain and suffering and loss of amenities and would so award.

90. As indicated, Mr Maynard for the plaintiff submitted that the plaintiff ought also to be awarded $100,000.00 for loss of future earnings and earning capacity. He does not say how he arrived at that sum.

91. The plaintiff in his witness statement and evidence in chief said that his earning capacity has been seriously diminished. He said that his salary as a teacher at St Paul's was about $1,700.00 per month. However, at the date of the trial hewas still employed as a school teacher, although with the Ministry of Education,and had been so employed since 2011. His salary at the date of trial was $2,896.00 per month.

92. In the case of Moeliker v A. Reyroylle & Co. Ltd. (1977) 1 W.L.R. 132, Browne, L.J., at pages 140 said that if a plaintiff is in employment at the date of the trial and earning as much as he was before the accident or more (as in the present case), he has no claim for loss of future earnings, although he may have a claim for loss of earning capacity if he should ever lose his present job. In that regard, Browne L.J. opined:

> "This head of damage generally only arises where a plaintiff is at the time of the trial in employment but there is a risk that he may lose his employment at some time in the future and may then, as a result of his injury, be at a disadvantage in getting another job or an equally well paid job. It is a different head of damages from an actual loss of future earnings which can already be provided at the trial".

93. Brown L.J.,in recommending the approach for assessing damages for loss of earning capacity said at page 142:

> "I do not think one can say more by way of principle than this. The consideration of this head of damages should be made in two stages. 1. Is there a "substantial" or "real" risk that a plaintiff will lose his present job at some time before the estimated end of his working life? 2. If there is (but not otherwise) the court must assess and quantify the present value of the risk of the financial damage which the plaintiff will suffer if that risk materialises, having regard to the

degree of the risk, when it may materialise, and the factors both favourable and unfavourable which in a particular case will, or may, affect the plaintiff's chances of getting a job at all, or an equally well paid job".

94. There is no evidence from the plaintiff or any of the doctors that his injuries or the residual effects thereof are such as would require him to retire early because of them. This is now twelve years after the accident and not only ishe currently employed, but he is earning more than he did at the time of the accident. His evidence is that he intends, by the grace of God, to work up to his retirement at age 65.He is now 58.

95. The plaintiff is a school teacher and in the circumstances, I cannot say that there is a substantial or real risk that he will lose his present job at any time in the future or, that if he did lose his job, he would not be able to secure another job at the same or a higher salary. After all, he was able to do so after more than ten years after the accident.

96. The claim for loss of earning capacity is therefore denied.

97. The plaintiff also claimed interest on general damages at the rate of 10% per annum from the date of service of the proceedings herein until judgment.

98. By Section 3(1) of the Civil Procedure (Award of Interest) Act, 1992,the Court is given the power to award interest on damages, or, on such part of the damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment as the Court considers appropriate unless the Court is satisfied that there are special reasons why no interest should be given in respect of such damages.

99. As a general rule, interest is awarded on damages for pain, suffering and loss of amenities from the date of service of the writ of summons or from the date when the amount can be ascertained. See Jefford v Gee [1970] 2 QB 130.

100. Relying on the case of Birkett v Hayes [1982] 1 W.L.R. 816, counsel for the defendant submits that interest on general damages should be allowed at 2% for the period from the date of the writ to the date of Judgment. He submits further that such period should be reduced by 6 years' due to the tardiness of the plaintiff in moving this matter to trial.

101. Having regard to all the circumstances, including the submissions of counsel for the defendants with regard to the delay in readying this case for trial, I would award interest at the rate of 5% per annum on general damages from the date of service of the writ of summons until judgment.

102. In summary then, it is ordered that judgment be entered for plaintiff in the sum of $100,000.00 together with interest at the rate of 5% per annum from the date of service of the writ of summons until judgment. Thereafter interest will accrue on the judgment debt of $100,000.00 plus interest as aforesaid pursuant to the Civil Procedure (Rate of Interest) Act, 1992, as amended, from the date hereof until payment.

103. The defendants are to pay the plaintiff's costs of this action, to be taxed if not agreed.

DELIVERED this 26th day of April A.D. 2013

Estelle G. Gray Evans
Justice