

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW & EQUITY DIVISION  
2017/CLE/GEN/01268**

**BETWEEN**

**VENITO BAIN**

**Plaintiff**

**AND**

**JAMAAL DAVIS**

**Defendant**

**Before: DEPUTY REGISTRAR *EDMUND TURNER***

**Appearances:** Mr. Obie Ferguson QC for the Plaintiff  
Ms. Nadia Wright for the Defendant

**Hearing Dates:** 9th December 2020, 10<sup>th</sup> August 2020, 5<sup>th</sup> August 2020, 17<sup>th</sup> June 2020, 18<sup>th</sup> March 2020, 27<sup>th</sup> February 2020, 15<sup>th</sup> October 2019, and 21<sup>st</sup> May 2019.

**J U D G M E N T**

**Deputy Registrar TURNER:**

**Introduction**

1. Pursuant to a Specially Indorsed Writ of Summons filed on 13<sup>th</sup> December 2017, the Plaintiff seeks damages for personal injury, loss and damage sustained in a road traffic accident on 10<sup>th</sup> January 2016. The said incident was caused by the negligence of the Defendant. However it must be noted that the Plaintiff was an

unrestrained passenger in a vehicle that was struck by another travelling in the opposite direction.

### **Case for the Plaintiff**

2. The Defendant, having filed no defense to the action, a Judgment in Default of Defense was entered on 18<sup>th</sup> April 2016. As a result, a Notice of Appointment for Assessment of Damages was filed on 16<sup>th</sup> July 2018.

### **Injuries Sustained by the Plaintiff**

3. When initially examined after the accident, the Plaintiff was noted to have a laceration to the right knee that was eventually sutured. The next day after the accident he complained of neck and shoulder pain that were resolved over time. His main complaint was regarding pain in his right knee. He was observed to have posterior knee tenderness and a **positive anterior drawer test indicating laxity of the anterior cruciate ligament**. A scan was done and the same indicated an **Anterior Ligament injury** without tear and some fat pad swelling indicating a contusion.

### **Medical Reports of Dr. Robert L. Gibson MD**

4. Doctor Robert L. Gibson, MD and expert in Orthopedic Surgery, and Registered Medical Practitioner within the Commonwealth of The Bahamas. Dr. Gibson gave evidence from his medical report dated 6<sup>th</sup> December 2016, the same was exhibited in this matter as “V.B.3.”
5. Dr. Gibson noted that at the time of examination, the Plaintiff at the time complained of right knee pain and posterior knee tenderness. According to Dr. Gibson, a scan of the knee revealed a ligament that was a primary stabilizer for the knee, was damaged, but not completely torn. It was also noted that the neck, chest, and lower

back symptoms that presented themselves the next day after the accident, had receded and were only noted on rare occasions. It was also noted that the Plaintiff has an ongoing pathology resulting from the accident in January of that year.

6. In addition to the above report, Dr. Gibson also examined the Plaintiff on 16<sup>th</sup> June 2020, the said report is exhibit “V.B.4.” Here Dr. Gibson noted the Plaintiff complained of his knee ‘giving out,’ with certain activities. An x-ray was performed and it was discovered that the Plaintiff had progressive functional loss in the injured anterior cruciate ligament causing symptoms of instability. This resulted in him having difficulty climbing stairs, and in his line of business as a linesman, descending could be an issue. Dr. Gibson noted that the Plaintiff would have to reconstruct the knee to avoid further deterioration of the joint.

#### **Medical Report of Dr. David Barnett dated 1<sup>st</sup> August 2017**

7. Dr. Barnett, an Orthopedic specialist and Consultant Surgeon is a recognized Registered Medical Practitioner within the Commonwealth of The Bahamas. Dr. Barnett prepared a report dated 1<sup>st</sup> August 2017.
8. In the report of Dr. Barnett and noted the following after an MRI Scan, i.e.:
  - i. A partial tear of the anterior cruciate ligament (ACL); and
  - ii. A bony bruise in the upper aspect of the lateral tibial condyle, bruising of the Hoffa fat pad.
9. It was noted that when the Plaintiff was assessed on 27<sup>th</sup> July 2017, his complaints was in reference to his right knee. He had no other areas of concern, as his chest and back were asymptomatic. There would be occasional swelling in the right knee. In addition, he

complained of discomforts and the knee gives away if he sleeps with his right leg twisted and also on arising from prolonged sitting.

10. Dr. Barnett also noted that Mr. Bain works as a line technician which involves him working at heights. It was noted at para 9 that the Plaintiff was coping at work, functioning fully, since he returned to work on 8<sup>th</sup> February 2016.
11. Dr. Barnett recommended 2 to 3 months of post-surgical rehabilitation before returning to work.

### **Cost of Future Surgery at Private Ward PMH**

12. Considering the current circumstance of PMH, I agree that future surgery for the Plaintiff ought to take place on the Private Ward of PMH. In addition, following figures extracted from paragraph 16 of the Defendant's Closing Submissions are also relevant, i.e.:

Dr. Gibson's Quote	<u>\$</u> 6,720.00
Dr. Kemp	1,680.00
Anesthesiologist	400.00
Physiotherapy	4,000.00
PMH Fee for ACL Surgery	2,500.00
Hospital Care	705.60
PMH Fee	627.00
<b>Total</b>	<b>\$16,632.60</b>

### **Future Loss of Earnings for 1 month**

13. It is agreed, as seen in Counsel for the Defendant's paragraph 17 that future loss of earnings based on the month calculation with NIB sickness benefit deduction will be the sum of **\$3,099.62**.

### **Judicial Council Personal Injury Guidelines**

#### **General Damages**

14. In making reference to the above source, reference is made to page 46 that refers to 'Severe Knee Injury,' and noted the following, i.e.:

**'Continuing symptoms by way of pain or discomfort and limitation of movement or instability...and the need for remedial surgery in the long term as a result of damage to the ligaments...'**

15. From the facts available to us from the medical reports, it is seen that the Plaintiff complained of swelling, discomfort, and the knee 'giving way. There was also mention of a tear to the **anterior cruciate ligament (ACL)**. In addition, both medical practitioners, one directly and the other 'strongly indirectly,' recommended surgery for the Plaintiff's knee. Towards this end, the Judicial Council in this circumstance recommends the figure of **€35,000-€55,000**. As a result in converting to dollars we have **\$36,441.65 - \$57,265.45**. Operating from the lower end of the spectrum considering the facts, the true figure for general damages, not factoring future surgery will be **\$19,809.05**.

## Special Damages

16. In considering loss of earnings and past medical expenses in this category, there is only the claim for the sum of **\$1,800.26**, which represents out of pocket expenses.

## Contributory Negligence

17. It is agreed that even though no Defense was filed in this matter and a Default Judgment entered, the Defendant does not have to plead contributory negligence, but the same can be raised at another stage. Reference regarding this issue was raised in the case of **Lunnun v. Singh and others** Court of Appeal (Civil Division) [1999] Lexis Citation 2979, at page 8 where it is seen that **Jonathan Parker J.** notes, i.e.:

**‘in my judgment, that in the instant case all questions going to quantification, including the question of causation in relation to the particular heads of loss claimed by the Claimant, remain open to the Defendants at the damages hearing... In my judgment, the underlying principle is that on an assessment of damages all issues are open to a Defendant save to the extent that they are inconsistent with the earlier determination of the issue of liability...’**

18. As a result of the above, the defendant can raise the issue of contributory negligence as the same is not inconsistent with the issue of liability previously determined. There is a relevant, undisputed fact in this matter that the Plaintiff, at the time of the accident, was unrestrained, i.e. not wearing a seatbelt. As a result, the injury sustained would have been significantly reduced if he had worn a seatbelt.

19. Counsel for the Defendant argues that contributory negligence ought to be factored and deducted by 7-10% accordingly. It is to be noted that the case of **Froom and others v. Butcher [1976] Q.B.286** is not within the Defendant's closing submission bundle. The figure of 10% will be applied in the circumstance.

### **Calculation**

20. <u>General Damages</u>	<b>\$19,809.05</b>
<u>Special Damages</u>	<b>\$1,800.26</b>
<u>Future Surgery</u>	<b>\$16,632.60</b>
<u>Future Loss of Earnings</u>	<b>\$3,099.62</b>
	Total: \$41,341.53

### **Contributory Negligence Deduction**

Deduction of 10%, thus  $\$41,341.53 - \$4,134.15 =$  **\$37,207.38**

### **Interest**

21. The law relating to the payment of interest on judgment debts is the Civil Procedure (Award of Interest) Act, 1992. Section 2 of the Civil Procedure (Award of Interest ) Act provides that:

**“2. (1)Every judgment debt shall carry interest at such rate as shall be prescribed by rules of court made by the Rules Committee constituted by section 75 of the Supreme Court Act levied under a writ of execution on such judgment:**

**Provided that nothing in this section shall apply in relation to any Judgment debt upon which interest is payable as of right, whether by virtue of an agreement or otherwise.**

**22.** The rate of interest payable on judgment debts is provided for under Rule 2 of the Civil Procedure (Rate of Interest )Rules, 2008, which provides that:

**a. “For the purpose of section 2(1) of the Civil Procedure (Award of Interest) Act, the rate of interest is the prime rate of the Central Bank plus two per per centum per annum.”**

**23.** As of the date, the current prime rate of the Central Bank as published on its website at <https://centralbankbahamas.com> is 4.25% per annum. As a general rule, interest runs from the time the judgment is pronounced-the incipitur rule as was recently affirmed by the Privy Council in **Rajesh Ramsarran v. The Attorney General of Trinidad and Tobago** Privy Council Appeal No. 18 of 2004.



**24.** Accordingly, interest payable on the costs as taxed is 4.25% per annum plus two per centum per annum which totals 6.25% per annum from the date of the Order being given by Justice Fraser, until payment in full.

**25.** Interest is accruing on outstanding costs in accordance with the provision of the Civil Procedure (Award of Interest) Rules at the rate of 6.25% per annum since the date of the judgment. Considering the date of judgment is 18<sup>th</sup> April 2018, some 4 years have passed thus far. Therefore  $4 \times 6.25 = 25$ ,  $25/100 = 0.25$ . Taking the aforementioned figure of **\$37,207.38** and multiplying the same with 0.25, we get the figure of **\$9,301.84**. Therefore, adding the same to the \$37,207.38 we get **\$46,509.22** interest inclusive.

### **Value Added Tax**

**26.** Valued added tax being at 10% currently, thus  $0.1 \times \$46,509.22 = \$4,650.92$ . As a result, the total figure is  $\$46,509.22 + \$4,650.92 = \mathbf{\$51,160.14}$ .

**Edmund Turner**  
**Deputy Registrar**  
**23<sup>rd</sup> May 2022**