

Cv_IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO CV 2007-03889

HCA S-411 of 2005

BETWEEN

NICHOLAS CELESTINE

Claimant

AND

**VISHNU RAMLAKHAN
LALCHAN ROOP
MOTOR AND GENERAL INSURANCE COMPANY**

Defendants

Before: Master Alexander

Appearances:

For the Claimant:

Mr Shastri VC Parsad

For the Defendants:

Ms Indra Lutchman-Ramdial

DECISION

1. This assessment relates to an accident that occurred along the South Trunk Road, Oropouche near Mosquito Creek on 1st October, 2003. On that date Nicholas Celestine was driving vehicle registration number PBF 7508 when Lachan Roop who at that time was driving PBG 5513 swerved unto his side of the road and collided head on with him. On impact, he was pinned behind the steering wheel. He claims that as a result he sustained severe injuries and by this action seeks compensation for personal injuries and consequential loss and damage.
2. This is a matter of some vintage as it was commenced by writ of summons filed on 14th March, 2005 and statement of claim filed on 12th January, 2006. The first defendant is the

owner of PBG 5513 and is sued in that capacity. The defendants filed their defence on 8th February, 2006. On 30th September, 2010 des Vignes J entered judgment against the defendants for damages to be assessed before a master.

THE INJURIES

3. Nicholas Celestine sustained the following injuries:
 - Fractures of the left tibia and fibula bones of the left leg;
 - Anterior cruciate ligament injury to the right knee Grade II;
 - Trauma to the head, neck, right knee and left leg;
 - Costochondritis from blunt trauma to the right anterior chest wall;
 - Cerebral concussion;
 - Cerebral Oedema;
 - Whiplash injury to the neck.

THE EFFECTS

4. Following the accident, Nicholas Celestine was hospitalized for 1 month at the San Fernando General Hospital in a semi-comatose state. He claims that the effects of his injuries on him were general seizures; intermittent neck and right anterior chest pain; weakness and numbness of his entire body; bucking in the right knee; mild limp on left leg when walking; tenderness along the right anterior rib cage; slurred speech and difficulty walking. By his statement of claim, he pleads cost of medical treatment, reports, medication and continuing, crutches, knee brace, CT Scan and travelling expenses. He also claims cost of future treatment, inclusive of an anterior cruciate graft reconstruction, MRI Scan of right knee and diagnostic arthroscopy of the right knee joint.
5. The injuries are detailed in the medical report of Dr Mitra Sieunarine dated 5th June, 2004 as updated on 8th December, 2004 (hereinafter the first and second Sieunarine reports respectively). According to the first Sieunarine report, Nicholas Celestine “sustained fractures of the tibia and fibula bones of the left and a Grade II anterior cruciate ligament injury of the right knee. ... [and was placed] in a left above knee plaster cast for

approximately three months.” The first Sieunarine report states further that, “[T]he head injury caused him to become drowsy, confused and later semi-comatosed. He also started having generalized seizures. He was initially admitted to Ward three at hospital but then transferred after one day to the Intensive Care Unit (ICU). ... A CT scan of the brain reported that he had cerebral oedema from the head injury and this had resulted in severe weakness and numbness of his entire body along with seizures. He was eventually transferred from ICU to Neurosurgical Ward ... [where] he continued to make slow but steady recovery.” The first Sieunarine report states that on his visit to Dr Sieunarine on 3rd June, 2004 he complained of intermittent neck and right anterior chest pain, a mild limp on the left leg on walking and weakness with occasional buckling in the right knee on weight bearing. He was fully ambulant without support and his slurred speech had returned to normal. He was also off all medications. The mild limp on the left leg was attributed to a “one centimeter shortening of the bones at the fracture sites on the left tibia and fibula.” He was placed on physiotherapy and muscle strengthening exercises and prescribed analgesic and muscle relaxants.

6. The second Sieunarine report states that there was a Grade I effusion and Grade II anterior cruciate ligamentous laxity and the left leg was one centimeter shorter than the right. Future medical treatment was recommended in the estimated sum of TT \$20,000.00 - \$25,000.00. The claim for future medical treatment was not pursued at the hearing of this assessment.

THE EVIDENCE

7. To support his claim for damages, Nicholas Celestine filed a list of documents on 13th October, 2011 and a supplemental list on 17th November, 2011; an unagreed bundle of documents on 28th October, 2011 and a supplemental unagreed bundle of documents on 17th November, 2011; witness statement of Nicholas Celestine on 7th November, 2011; witness summaries of Dr Mitra Sieunarine on 7th November, 2011 and of Dr Jose Dennis Cruz on 7th November, 2011.

DAMAGES

1. Damages are pecuniary compensation obtainable by success in an action for a wrong based in tort or a breach of contract and usually take the form of a one time, lump sum award of money. **Mc Gregor on Damages**.¹ In actions for personal injuries, damages recoverable are usually in the form of special or general. Special damages must be pleaded and proved and consist of out of pocket expenses and loss of earnings incurred down to the date of trial. Such damages are generally capable of substantially exact calculation. See ***Charmaine Bernard v Seebalack***.² In the instant case, the parties agreed special damages in the sum of \$3,000.00 inclusive of interest and this is so allowed.

2. General damages are those which the law implies. Such losses cannot be precisely quantified, so they are not specially pleaded. These include compensation for pain and suffering and loss of amenities and cover injuries that lead to continuing or permanent disability and compensation for loss of earning power in the future. See ***British Transport Commission v Gourley***.³ The court in ***Mario's Pizzeria Ltd v Hardeo Ramjit***⁴ described these damages as what the law presumes will flow from the direct, natural and probable consequences of the wrong.

3. To assess general damages in this matter, the principles in ***Cornilliac v St Louis***⁵ are applied:
 - i. The nature and extent of the injuries sustained;
 - ii. The nature and gravity of the resulting physical disability;
 - iii. The pain and suffering which had to be endured;
 - iv. The loss of amenities suffered; and
 - v. The extent to which the plaintiff's pecuniary prospects have been materially affected.

¹ **Mc Gregor on Damages** 17th edition paragraph 1-001 page 3

² ***Charmaine Bernard v Seebalack***, PC No 0033 of 2009 @ page 7

³ ***British Transport Commission v Gourley*** [1956] AC 185 at 206

⁴ ***Mario's Pizzeria Ltd v Hardeo Ramjit*** CA 146 of 2003

⁵ ***Cornilliac v St Louis*** (1965) 7 WIR 491

Nature and extent of the injuries sustained

4. Nicholas Celestine suffered fractures of the left tibia and fibula bones of the left leg, head and chest injury as detailed above in the reports by Dr Sieunarine. It is worth repeating here that apart from the fractures, Nicholas Celestine's head injury caused him to become drowsy, confused and left him in a semi-comatose state; and caused him to experience weakness and numbness of the body and seizures. He was also left with a mild limp and a left leg that was one centimeter shorter than the right.

The nature and gravity of the resulting physical disability

5. Nicholas Celestine has been reported to have made slow but steady progress from his injuries. He remains, however, with a disability described as a "mild limp on the left leg" and a "one centimeter shortening of the bones at the fracture sites on the left tibia and fibula." He also continues to experience intense pains in his neck, chest and back.

Pain and suffering endured

6. *"'Pain and suffering' is now a term of art, so constantly has it been used by the courts, and there appears to be no exact difference between pain on the one hand and suffering on the other. It has been suggested that 'pain' is the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while 'suffering' is distress which is not felt as being directly connected with any bodily condition. On this analysis 'pain' needs no further elucidation; 'suffering' would include fright at the time of the injury, fear of future incapacity, either as to health or possible death, to sanity or to the ability to make a living, and humiliation, sadness and embarrassment caused by disfigurement."*⁶ **Mc Gregor on Damages.**
7. Every person's threshold for pain is uniquely his. To appreciate Nicholas Celestine's pain and suffering, I turned to his evidence as contained in his witness statement. On impact on the date of collision, he hit his head on and was pinned behind the steering wheel and required help to get out of the vehicle. He states that immediately his head and back began to hurt, and he felt confused, disoriented and dizzy and began screaming in terror. He states that his legs were also paining him. In his own words he states, *"I felt pain flowing all over my*

⁶ Mc Gregor on Damages 17th edition, chapter 3 para 3-003 page 53

body especially around my neck, chest and back. I was very scared because I thought that I would die from the injuries or if I did live that I would not be able to be the person I was prior to the collision. I felt dizzy and out of it. I felt as if I was observing everything from a distance. Every time I took in a breath my body would hurt and sharp pains continued to radiate throughout my body. I tried to move but I could not. My legs were trapped in the motor vehicle. I was helpless and overwhelmed because I could not move and I could not assist my family.” The pain and suffering mirrored in the words of Nicholas Celestine were clear and undisputed.

8. On his trip to the hospital he recalls drifting in and out of consciousness and the overwhelming pain, exacerbated by the ambulance ride. He states that at the hospital, he was in a lot of pain; his legs were hurting and he was scared and frustrated by his helplessness and fear of being paralysed. Lying on the bed at the hospital was painful and he states that he would place his leg on pillows to help with the pain but this did not ease the pains. On regaining consciousness, he experienced slurred speech and it scared and confused him and that, “[T]he most horrific experience was knowing and seeing my mother speak to me but not being able to respond.” On discharge, he still was experiencing severe pains about his body. At home, he continued to experience intense, unbearable, sharp back pains; difficulties sleeping and regular nightmares and he was stressed and depressed by his condition. Travelling in a taxi was a painful exercise so too was driving or sitting for long. To date, the pains in his back, chest and neck have continued unabated and he is now heavily dependent on painkillers.

Loss of amenities

9. Generally, “[D]amages may be awarded for the loss of the pleasures or amenities of life, either permanently – by the loss of a leg, for e.g. – or temporarily – as by mere detention in hospital or in bed for a period. This is a distinct element altogether from pain and suffering, or from loss of earning power.” See **Munkman on Damages For Personal Injuries and Death.**⁷

⁷ Munkman on Damages For Personal Injuries and Death 11th edition pages 46-47.

10. Further, in *Heaps v Perrite Ltd*⁸ where a plaintiff had lost both hands, Greer LJ said that it must be taken into account the fact that, *“the joy of life will have gone from him. He cannot ride a bicycle, cannot kick a football. At any rate, if he can kick a football he cannot catch one. He cannot have any of the usual forms of recreation which appeal to the ordinary healthy man ...”*
11. Also, in the case of *Rose v Ford*,⁹ Lord Roche noted, *“I regard impaired health and vitality, not merely as a cause of pain and suffering, but as a loss of a good thing in itself.”*
12. In the instant case, Nicholas Celestine is unable to play sports because of his pain. Prior to the collision, he played basketball and engaged in other outdoor activities and wanted to pursue a career in the military. His dream has been shattered by the accident. He claims that to date, he walks with a limp and experiences pains on squatting and bending. He states also that prior to the accident, he would assist his mother with the household chores of vacuuming, painting, indoor and outdoor cleaning but that the neck and back pains now make that impossible. He claims that the accident has dramatically changed his life, destroyed his dreams, and he finds himself stuck in a lower financial bracket which frustrates him. To demonstrate the effects on him he admits that he is now gainfully employed on a cruise ship as a cleaner since 2007 because he could not apply for the more challenging and financially rewarding jobs as his neck and back pains affect his performance of certain tasks.

Extent to which pecuniary prospects have been materially affected

13. Nicholas Celestine states that because of this accident he could not seek employment until 2007 because of his overwhelming and unbearable pains. It has unfairly ripped him of his military dreams. He claims that whilst he is employed aboard a cruise ship now, it is in a low paying job and he earns US\$636.00 per month, a job he has had to settle for because of his injuries. He also states that the neck and back pains have prevented him from applying for more lucrative jobs.

⁸ *Heaps v Perrite Ltd* [1937] 2 AER 60, 81 Sol Jo 236, CA

⁹ *Rose v Ford* [1937] AC 826 at 859

AUTHORITIES ON GENERAL DAMAGES

14. Counsel for Nicholas Celestine suggested the sum of \$200,000.00 as a reasonable award for the injuries he sustained on reliance on the following cases:

- ***Mohammed v Sackoor***¹⁰ where on 27th June, 1982 Crane J for whiplash where a plaintiff had to wear a neck brace awarded \$20,000.00; as adjusted to December, 2010 to \$156,201.00.
- ***Pierre & Ors v T&TEC, Island Property Owners Assoc & LueShue***¹¹ where in 1999 Ventour J for a whiplash; ear injury; head, neck and spinal cord injuries; lateral recess syndrome of C3, C4 and C4-5 levels of cervical spine awarded \$70,000.00; as adjusted to December, 2010 to \$143,414.00.
- ***De Leon v Ramlal***¹² where in 2000 Justices of Appeal Hamel-Smith, Permanand and Warner for a fracture of the cervical spine; pelvis-whiplash injury awarded \$75,000.00; as adjusted to December, 2010 to \$153,082.00.
- ***Dexter David v Ministry of National Security & Ors***¹³ where a claimant who suffered restriction of movement; back pain; hip operation; could not run, squat or stoop; pain in the ear and temple area; pain affected his ability to function in an office environment; inability to sit and stand for long was awarded \$200,000.00.
- ***Moreau Evans v Port Authority of T&T***¹⁴ where in 2010 Best J for a spinal injury; pre-existing degenerative cervical and lumbar disc disease; acute prolapsed at C5/C6; surgery for anterior cervical decompression awarded \$200,000.00 and \$499,000.00 for loss of future earnings and future surgery of \$38,665.00; as adjusted to December 2010 to \$212,487.00.

¹⁰ *Mohammed v Sackoor* HCA 664 of 1979

¹¹ *Pierre & Ors v T&TEC, Island Property Owners Assoc & LueShue* HCA 243 of 1996

¹² *De Leon v Ramlal De Leon v Ramlal* CA No 53 of 1999

¹³ *Dexter David v Ministry of National Security & Ors* HCA 1838 of 2002

¹⁴ *Moreau Evans v The Port Authority* HCA 3958 of 2006

- ***Elva Dick-Nicholas v Jason Hernandez***¹⁵ where for difficulty with walking and sitting, where a claimant was declared unfit to work because of injuries and could not earn her pre-accident salary was awarded \$407,999.20.
- ***Gerarrd Jadoobirsingh v Bristow Caribbean Limited, Lewis Suarez***¹⁶ where in 2007 Dean Armorer J gave a claimant for chronic pain and numbness in the spine C-34, C-56, L45 and L5S1; lost libido; post traumatic stress leading to depression; could not sit at desk for more than 30 minutes an award of \$80,000.00 and for loss of pecuniary prospects \$479,990.00; as adjusted to December 2010 to \$105,150.00.
- ***Karim v Brown***¹⁷ where Peterkin J for a brain injury awarded \$20,000.00; as adjusted to December 2010 to \$780,274.00.
- ***Boodram v Lucas***¹⁸ where de s Iles J for a patient who suffered epilepsy and was assessed as 60% physically incapacitated and 90% mentally incapacitated awarded \$50,000.00; as adjusted to December 2010 to \$411,625.00.
- ***Sieunarine v Doc's Engineering Works [1992] Ltd***¹⁹ where Rajnauth-Lee J for a compound fracture of the left temporal bone and haematoma; emergency craniectomy, right-sided weakness, seizures, headaches, personality change, noise intolerance, blurred vision, slurred speech and poor memory awarded \$200,000.00 as adjusted to December 2010 to \$322,650.00.

15. Counsel for Nicholas Celestine has submitted that additional emphasis should be placed on the fact that he would be dependent on medication to alleviate his pain for the rest of his life; his pain has curtailed his employment opportunities and affected his savings and has and will continue to put a strain on his financial resources. Counsel for the defendants has asked that

¹⁵ *Elva Dick-Nicholas v Jason Hernandez* CV2006-010305

¹⁶ *Gerarrd Jadoobirsingh v Bristow Caribbean Limited, Lewis Suarez* CV2005-00784

¹⁷ *Karim v Brown* HCA102/1964

¹⁸ *Boodram v Lucas* HCA 422/1975

¹⁹ *Sieunarine v Doc's Engineering Works [1992] Ltd* HCA 2387/2000

it be noted that Nicholas Celestine has made good recovery from his injuries, was fully ambulant and off all medications. The court was asked to place little weight on his evidence that it took him until 2007 to get a job as his medical evidence had pointed to his recovery time being 1 year.

16. In my view, some of the authorities provided by counsel for Nicholas Celestine were antiquated and not squarely representative of the instant injuries so I sought the guidance from the following:

- ***Gill v Hinds***²⁰ where Best J in 1993 awarded \$68,000.00 for fractures of the femur, tibia and ulna; as adjusted to December, 2010 to \$181,521.00.
- ***Ramlochan v Ramsaran***²¹ where for fractures of both legs; 1 inch shortening of left leg; lacerations and scarring of both legs; fractured collar bone an award was made of \$20,000.00; as adjusted to December, 2010 to \$178,964.00.
- ***Nimrod Joseph v Roy Edwards & Presidential Insurance Co***²² where in a February, 2012 decision of this court a claimant (a driver by profession) who had sustained a fractured right tibia and fibula; comminuted intra-articular fracture left distal radius; cerebral concussion; multiple abrasions to both arms, right thigh, left leg; and face and suffered with a loose incisor tooth and underwent open reduction and internal fixation surgery of the right tibia with an intramedullary nail; could not stand or walk for prolonged periods and walked with a pronounced limp and with the aid of a walking cane was awarded \$160,000.00.
- ***Ramroop v Burroughs Welcome & Co Ltd***²³ where an award of \$14,000.00 was made for fractures of both legs; 1.25” shortening of left leg; osteo-arthritis; post-

²⁰ *Gill v Hinds* HCA 53 of 1983 *Gill v Hinds* HCA 53 of 1983

²¹ *Ramlochan v Ramsaran* HCA 2680 of 1973

²² *Nimrod Joseph v Roy Edwards & Presidential Insurance Co* CV2008-00500

²³ *Ramroop v Burroughs Welcome & Co Ltd* HCA 457 of 1975

concussion headaches and dizziness; touch loss; as adjusted to December, 2010 to \$211,807.00.

- ***Caribbean Molasses Co. (Trinidad) Ltd v Ganness***²⁴ where in 1983 an award was made to a plaintiff/taxi driver in the sum of \$30,000.00 for fractures of the right fibula, femur and tibia; loss of movement in knee and 3” shortening; as adjusted to December, 2010 to \$195,959.00.

17. I also had regard to the fact that apart from the fractures, Nicholas Celestine suffered seizures, bodily weakness and numbness, a mild limp, bucking right knee, slurred speech and cerebral oedema. By the time of his medicals in 2004, however, most of these conditions had been satisfactorily resolved, though the mild limp was still evident. I note also that he continues to be plagued by pains in the neck, chest and back and that this condition may be one that he would have to live with for the rest of his life.

18. To determine an appropriate sum, I considered that it was a once and for all award which must adequately and fully compensate Nicholas Celestine for his pain and suffering and all present and future losses occasioned by the tort. Generally, damages must compensate for an established loss and not give some gratuitous benefit to a victim. The evidence before me was clear and irrefutable, pointing to excruciating pain and suffering endured and the frustration and distress arising from this accident. Nicholas Celestine was 19 years when his life was in a split second turned topsy turvy by the reckless driving of Lalchan Roop, who authored the head on collision that negatively impacted the life of this young man. He now finds himself in his post-accident life forced to make choices that are not aligned with his dreams and ambitions but dictated by the consequences of his injuries. For this he is entitled to be compensated and whilst monetary awards can never perfectly compensate for personal injuries and are not meant to enrich claimants, they should strive, as far as money can go, to fully and adequately compensate him for his injuries, grave inconvenience, pain and suffering. The pre-accident joy of life that was Nicholas Celestine’s has been stolen from him and with

²⁴ *Caribbean Molasses Co. (Trinidad) Ltd v Ganness* CA 7 of 1979

this his dreams. It is to be noted, however, that as at the date of assessment, Nicholas Celestine had made good recovery from his injuries and was now holding down full time employment. I, therefore, find the sum of \$140,000.00 to be a fair, reasonable and appropriate award to meet the justice of this case.

INTEREST AND COSTS

19. The award of interest is discretionary and operates to compensate the litigant in personal injuries cases, “*for being kept out of money which ought to have been paid to him.*” See **Jefford v Gee**²⁵. In making this award (below), I also bore in mind the recent Privy Council decision of **Leriche v Maurice**²⁶ where costs was calculated on the total claim, inclusive of interest.

ORDER

20. By consent, it is ordered that the defendants do pay to the claimant, Nicholas Celestine special damages in the sum of \$3,000.00 inclusive of interest.

21. It is also ordered that the defendants do pay to the claimant general damages in the sum of \$140,000.00 with interest at the rate of 9% per annum from 14th March, 2005 to 29th June, 2012 and costs as assessed in the sum of \$26,548.20.

22. Stay of execution of 28 days.

Dated 29th June, 2012

Martha Alexander
Master (Ag)

²⁵ *Jefford v Gee* (1970) AC 130

²⁶ *Leriche v Maurice* [2008] UKPC 8