IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-00004

BETWEEN

IAN SEALY

Claimant

AND

SIMON LAYNE

First Defendant

MOTOR ONE INSURANCE COMPANY LIMITED

Second Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Third Defendant

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Before: Master Alexander

Date of delivery: **March 20, 2019**

Appearances:

For the Claimant: **Mr Shawn Roopnarine instructed by Ms Shanta Balgobin**

For the 3rd Defendant: **Mr Stefan Jaikaran and Ms Nisa Simmons**

DECISION

1. This assessment involved a single fracture injury and its impact, which attracted a global award of damages of $312,720.00 plus costs and interest. The award was based on the evidence presented in the context of the pleaded case for damages, inclusive of future loss. The assessment was ventilated fully before this court, as counsel were unable to have a meeting of the minds on any aspect of the compensation that the claimant should attract.

FACTS

2. Following a trial on May 17, 2017, judgment was entered against the third defendant. The matter involved a claim for negligence, arising from a vehicular accident on April 7, 2015 along Rushworth Street, San Fernando, between PBB 2926 and a marked police vehicle registration number PCZ 9404. At the material time, the claimant was a back seat passenger, who was not using a seat belt. He sought judicial recourse by filing a claim on January 4, 2016 for compensation (amended on June 3, 2016). Both the initial and amended claims referred erroneously to the accident date as April 7, 2014.

EVIDENCE

3. Several witnesses attended to give evidence, including Dr Peter Gentle, Christie Sealey, Rayshoon Figaro, Garth Gibbons and the claimant. All witnesses were available for cross-examination and their evidence proved invaluable in settling the damages. There was no shortage of documentary evidence in support of the case advanced for general damages. Conversely, there was no evidentiary equivalence achieved in the documentary standard for the case presented for special damages, particularly loss of earnings, so judicial intervention was required to settle the issues.

GENERAL DAMAGES

4. The general damages award was pegged at $85,000.00 for the injuries, continuing disability, pain and loss of amenities suffered by the claimant. In reaching this award, the law and other general principles were considered, including the illustrious ***Cornilliac***[1]principles.

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[1] *Cornilliac* v *St Louis* (1965) 7 WIR 491

Medical evidence

5. The amended pleadings set out that the claimant had sustained a severe injury to his left shoulder, namely a fracture dislocation of his left humeral head for which he had an open reduction and internal fixation. A report of Mr Neil C Persad of South West Regional Health Authority dated April 26, 2015 contained the initial diagnosis of this injury. The Persad report indicated that the claimant was seen in the emergency department of the San Fernando General Hospital ("SFGH") on the date of the accident. The Persad report was issued some eighteen days after the accident. At that time, the injury was relatively recent and the claimant had not reached maximum improvement. Mr Neil C Persad was not called to give evidence, but his report formed part of the evidence via hearsay notice dated March 29, 2017. It was closest in time to the accident, so effectively linked the injury suffered to the accident. The Persad report stated that the last x-ray showed a satisfactory fixation of the humerus with some inferior subluxation of the humeral head and no evidence to date of avascular necrosis. It projected, however, that this particular injury was prone to the complication of avascular necrosis, which might require further surgical procedures.

6. Dr Gentle, who was called to give evidence at the assessment, confirmed that the claimant had suffered a fracture dislocation of the left shoulder. He provided two medical reports and viva voce evidence, by means of which this court obtained clear explanations of the main injury sustained by the claimant, its extent and continuing effects on him. It seemed that the injury led to stiffness and diminished mobility in both shoulders, left wrist and left elbow. This expansion of the medical evidence to cover effects to both shoulders became a cause of disagreement between counsel, as it was not

pleaded that any injury occurred to the right shoulder. In this context, it was necessary to examine the emergence of Dr Gentle into the case.

7. Dr Gentle saw the claimant privately and specifically for the purpose of an opinion. The initial visit was on October 29, 2015 some six months after the accident. The first Gentle report was issued on December 16, 2015 and the surgery to the left humerus by insertion of buttress plate and nine screws (to hold the bones together) was confirmed based on his review of an x-ray. Dr Gentle documented that there was no loss of consciousness or amnesia following the accident. He then conducted an examination of the left shoulder where he found moderate pain and a diminished range of movement by 90%. Dr Gentle's examination also revealed that the claimant's elbow had minimal pain. However, while his left forearm was normal, he had 0^0 of supination, which was very painful. His examination also pointed to 50% diminished movements, in all directions, in the left wrist and right shoulder. Further, Dr Gentle stated that the claimant was not yet fit to resume work, so required a final assessment within six months.

8. The second Gentle report dated May 2, 2017 came after a visit on April 28, 2017 some two years post the first visit and first Gentle report. A history taken from the claimant reflected complaints of disability with the use of his left hand, specifically the making of a fist, and visual issues that now have him wearing spectacles. Upfront, this court disregarded the evidence as to a need for glasses to improve his vision, since it was irrelevant and delinked from the tort engaging this assessment. Dr Gentle indicated that on his examination of the claimant's right shoulder, it was normal with no neurovascular signs in his right arm or hand. There was full range of painless movement in his left elbow. There was some slight improvement in his left shoulder as it now

revealed abduction to 80^0 only with mild to moderate pain and reduction in internal and external rotation of 30^0 with pain. A surgical scar of 14.6cm in length on the shoulder was seen. Examination of the left forearm showed normal pronation but supination only of 45^0 of movement, with pain in the left wrist and shoulder when he tried to supinate his left forearm. Movements in the left wrist were reduced by 10^0 and were painful at extremes of movement. Examination of the left hand revealed oedema, stiffness and inability to make a fist. The joints and fingers were stiff and painful with restriction of movement. He was ascribed a 10% ppd for the fracture, stiffness and inability to make a fist. It stated that surgery would not improve his left shoulder, left wrist and hand. This second Gentle report advised continuing home physiotherapy, as he was having challenges to get more physiotherapy from the public hospital. He was also unable to work as a grass cutter or, given his age, do any form of work.

9. Ms Simmons cross-examined Dr Gentle on whether the claimant had sustained a right shoulder injury and took issue with whether the course of physiotherapy was sufficient for the injury sustained. Mr Roopnarine then sought to puncture the cross-examination by raising several issues, including that this was not raised in the defence or "put" to Dr Gentle and that no medical evidence to the contrary was led. Further, the claimant was not cross-examined on this issue, so the existence of this injury must be accepted as truth[2]. Also, it was argued that the omission of a fact does not mean that the right shoulder was not injured.

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[2] *Browne* v *Dunn* (1893) 6 R 67 and *Markem* v *Zipher* [2005] EWCA Civ 267 where it was stated that "*failure to cross-examine a witness on some material part of his evidence or at all, might be treated as an acceptance of the truth of that part or whole of his evidence.*"

10. As to the alleged injury to the right shoulder, this court was of the view that this was not part of the pleaded case of the claimant. It manifested in the first Gentle report as diminished movement by 50% in the right shoulder with pain in all directions. By the second Gentle report, some two years later, this seemed to have been resolved. Counsel's arguments, that the omission of a fact should not mean that an injury did not occur and that the non-answer in the defence was fatal, were lacking in persuasion. In fact, these arguments were insufficient to convince this court to factor this alleged injury into its final award. First, injuries were required to be pleaded and a defendant could not be expected to respond in its defence if the case (or injury) was never put to him as one that he has to meet. Not having pleaded this alleged injury, even in the amended claim, and its inclusion in a medical report, six months after the accident, of pain and limitation were not conclusive as linking it to the accident. This court was prepared only to accept the injury of a fracture humerus, as pleaded, as well as the medical evidence of stiffness, limitations, and disability that flowed from that injury. Also accepted was the evidence of scarring at the surgical site. If the claimant wanted to claim injury to his right shoulder, he should have pleaded it and not sought through the backdoor to introduce evidence outside his pleaded case.

11. As to the issue of the course of physiotherapy from the public institution being insufficient to achieve maximum recovery, as raised by Ms Simmons, this court's view was that it was settled by Dr Gentle. The second Gentle report stated clearly that the claimant had a "good course of physiotherapy" in the public health system so he can continue his exercises at home. Unless counsel has medical qualification or evidence that stated otherwise, this conclusion on physiotherapy was accepted by this court.

The claimant's evidence

12. The claimant gave evidence of his pain, which initially was severe and unbearable, and later intense from the surgery. He spent nine days at the SFGH and his left shoulder remained in a sling for about one year. It was presumed that a measure of discomfort and continuing pains would have characterized this period of recovery. He averred to still experiencing pain in his shoulder up to the date of the assessment. It was accepted that while this might be so, the pain would have been of declining intensity. In fact, this was supported by the Gentle medical reports that documented his pain on a reducing scale, of moderate to mild, over a two-year span.

13. Consequent on the injury and pain, the claimant would have suffered an impact on his quality of life. He averred that the accident significantly changed his life as he remained in daily pain and he had lost his pre-accident job. He claimed that it was a great source of pride to him to maintain and tend to the yards of others, and now he was unable to continue with this. He was also an active, physically fit and outgoing man, who worked hard to provide for himself. The limitation in the use of his hand had caused him to lose his job satisfaction and whittled away at his quality of life.

CASES

14. Mr Roopnarine suggested an award of $75,000.00 - $150,000.00 based on:
    - ***Ramnarine Singh and ors* v *Johnson Ansola*[3]** where the claimant suffered a right shoulder dislocation, severe comminuted compound fracture of the right lower tibia and fibula and a right talar dislocation. On April 5,

[3] *Ramnarine Singh and ors* v *Johnson Ansola and Ors* Civil Appeal No 169 of 2008

2012 Rajkumar J (as he then was) awarded general damages of $150,000.00, which was upheld by the Court of Appeal.

- ***Michael Gaffor* v *Holder Roger Lance et al*** and ***Ronald Kennedy v Holder Roger Lance et al***[4] where both claimants were unconscious in the accident. Apart from the loss of consciousness, the claimant in the first matter suffered laceration to the right shin, a dislocated right shoulder with an avulsion fracture on the greater tuberosity of the right humerus with soft tissue injuries to the chest and right shin. He wore a sling for six weeks and was referred to physiotherapy. On June 27, 2016 Dean Armorer J awarded $75,000.00.
- ***Henry Belford* v *Khamerajie Dass***[5] where an award of $150,000.00 was made for loss of consciousness, multiple abrasions to both forearms and hands, dislocation of the right shoulder (anterior), fracture dislocation of the left shoulder, and comminuted fracture left tibial plateau schatzer V. There was gross swelling of the left knee and proximal leg, pain in the right sided upper quadrant, right pulmonary embolism and shortening of the left leg. He underwent numerous surgeries, which included an open reduction and internal fixation of the left shoulder.

15. Ms Simmons suggested an award of $70,000.00 - $90,000.00 based on:

- ***Ramsaran* v *Ramnath***[6] where for a fracture of the left humerus with radial palsy and minor thigh injuries, an award was made of $16,000.00; as adjusted to December, 2010 to $95,481.00.

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[4] *Michael Gaffor* v *Holder Roger Lance, Presidential Insurance Company Limited, Ruben Mitchell, Sagicor Life Insurance Company Limited, A.M. Marketing Limited* CV2012-00296 and *Ronald Kennedy* v *Holder Roger Lance, Presidential Insurance Company Limited, Ruben Mitchell, Sagicor Life Insurance Company Limited, A.M. Marketing Limited* CV2012-00297

[5] *Henry Belford v Khamerajie Dass and another* CV2012-02204 delivered on April 16, 2014

[6] *Ramsaran* v *Ramnath* HCA 4102 of 1980

- ***Dookie* v *Bharath***[7] where for serious injury to his left arm with residual stiffness and loss of rotation (exacerbated by the failure to exercise), an award of $40,000.00 was made; as adjusted to December, 2010 to $92,613.00.
- ***Premsagar* v *Rajkumar***[8] where for a fracture in two places at the elbow, minor lacerations, a weak grasp, inability to lift heavy objects, some deformity and with an ascribed ppd of 18%, an award was made of $9,000.00; as adjusted to December, 2010 to $88,056.00.
- ***Ramjohn* v *Pollard***[9] where for a serious hand injury with a fracture, which was treated with a plastic fixation, reduced grasp, with an ascribed permanent partial disability of 10-12%, an award was made of $12,000.00; as adjusted to December, 2010 to $70,681.00.

16. After considering all the authorities above, it was felt that ***Premsagar*** (supra) and ***Ramjohn*** (supra) were aligned to the matter at bar. The injuries in ***Ramjohn***, in particular, seemed twinned with the claimant's case, so was a solid comparative yardstick for the award. The cases presented by Mr Roopnarine involved injuries that were more extensive and of greater severity. They were helpful as they operated as stop gauges for the award. The claimant, based on a thorough review of these authorities, could not attract an award of similar ilk. The claimant's injury was incomparable to the multiple injuries sustained in ***Ramnarine Singh*** or ***Henry Belford***. Further, the medical evidence was clear that the claimant had not suffered any loss of consciousness on impact of the accident as with some of these claimants. In any event, it was a lone injury sustained by the claimant and this was not

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7 *Dookie* v *Bharath* HCA 390 of 1991
8 *Premsagar* v *Rajkumar* HCA 244 of 1974
9 *Ramjohn* v *Pollard* HCA 441 of 1976

changed by describing its impact and continuing disability, as if these were "injuries". They were not, and in fact though a single injury, it was severe and had a debilitating impact on him. This court was careful and evenhanded, therefore, in considering the resulting impact of this sole injury on the claimant. He was left, at the end of the day, with an inability to make a fist or grasp items. This in itself would have been a source of frustration for him, as a grass cutter and a man who used his physical prowess daily to earn income.

17. This court considered that the claimant, while still in pain had made steady recovery, and that continuing homespun physiotherapy was advised but no revolutionizing change of circumstances anticipated. In effect, the claimant had reached maximum recoverability and his current quality of life was not likely to be upgraded. It was considered that while he was entitled to fair compensation, he was not to be placed in a more advantageous position post-injury. His injury was a single one that had a serious impact; and it continued to restrict his post-accident activities. It was concluded, therefore, that his compensation must reflect the true extent of his injury and resulting impact; that he would continue to be challenged in his quality of life but that there was improvement that might now have stabilized. Despite the unsolicited tort inflicted on him, the claimant was entitled only to fair compensation. This court thus made a balanced and reasonable award in the context of the injury, evidence, cases and other guiding principles, above stated.

SPECIAL DAMAGES

18. Judicial guidance on special damages abound, so in the instant case where this head was pleaded and particularized, this court determined the quantum on the evidence. The approach of this court to the several claims was simply to require the evidence in proof of the damages. In the absence of proof, this

court was restrained from compensating the claimant for any item of special damages that was not proven by way of proper documentation or compelling corroborating evidence. Given this backdrop, the claims of travelling of $1,800.00 and a police report of $150.00 could not stand for lack of proof. There was a receipt dated May 18, 2017 for medical services of Dr Gentle, attached to a hearsay notice, so $1,100.00 was allowed.

19. As for the claim of domestic/nursing attendance from April 7, 2014 at $2,500.00 per week ($8,400.00 monthly), which was not supported by receipts or medical evidence of this need, this court was prepared to consider a reasonable sum to award hereunder. He called evidence from Raysheen Figaro and Christie Sealey, his niece and a grandniece, who confirmed that they took care of him out of their love and affection for him. He was entitled to recoup a sum for gratuitous care provided by family members and friends[10]. This compensation was sought for one year in the global sum of $100,800.00, on the basis that he needed twenty-four hour care during the period his left hand was in a sling. This claim was lawful but, in the view of this court, the extensive period for which compensation was sought was unreasonable, especially given that it was not bolstered by any medical evidence. Considered was that initially, his pains would have been severe and limited his ability to care for himself. However, as the injury healed, his ability to do his personal hygiene or take his medication would have returned. It was not accepted that because his hand was in a sling for approximately one and a half years, he needed full-time nursing care. It was considered that as he recovered, the extent of domestic care needed would have been on the

[10] *Hunt* v *Severs* [1994] 2 AC 350

reducing scale, so it was fair to allow at least nine months gratuitous care at $2,500.00 per month, to give a total of $22,500.00.

Loss of earnings

20. Prior to the accident, the claimant worked as a grass cutter in the La Romaine area for over forty years. All jobs were manual, requiring the use of both hands. He earned approximately $700.00 to $1,000.00 per week. It was his evidence further that for his services, he charged between $150.00 to $300.00 per job and an additional $150.00, if he were required to do landscaping and clean trees. In his viva voce evidence, he stated that he worked every day of the week, from Sunday to Sunday. He averred that he had at least one job per day. In any given week, he would earn at least $500.00 for any two days of that week. During cross-examination, he stated that his average profit was $1,000.00 weekly.

21. In support of his earnings, he called Garth Gibbons, who utilized his services. Garth Gibbons lived in La Romaine for over thirty years, during which period he knew the claimant as a grass cutter and yardman. Garth Gibbons gave evidence that the claimant worked in the La Romaine area and that he regularly hired his service, making payments to him of $150.00 to $300.00 per job, depending on what service was performed. The claimant cleaned and maintained his yard, twice per month, once to cut the grass and two weeks after to do a general clean up. He also avowed that he had seen the claimant working every day in yards in the neighbourhood, and even recommended him to persons in the La Romaine area. He stopped seeing him in April, 2015.

22. Ms Simmons advanced that the claimant's evidence abysmally failed to withstand scrutiny, under the probing of cross-examination. The first

argument raised was that of a lack of credible evidence from any financial institution showing either a consistent income or regular deposits in the period preceding the accident. Secondly, the absence of receipts proving payments received from clients or any other documentary evidence showing daily jobs undertaken and payments received. The absence of documentary records of earnings was deemed fatal to the case advanced by the claimant. Thirdly, counsel pointed to the evidence of Garth Gibbons as compounding the general inconsistency of the claimant's case for loss of earnings. The offending aspect of Garth Gibbons' evidence seemed to be his admission under cross-examination that the claimant only worked for him, "[A]s long as the grass got out of hand" and was paid based on the work done on the given day. Counsel also took issue with the evidence of the claimant to wit that his pleaded weekly salary of $700.00 to $1,000.00 represented profits and that his overall claim for loss of earnings amounted to $166,000.00. Counsel posited that this was a random figure based on estimated weekly earnings. The court was asked to give little weight to these guesstimates, as the case advanced fell woefully short of proving the claim for loss of earnings.

23. In support of the call to discredit and reject the evidence of the claimant, Ms Simmons cited the renowned ***Willie's Ice-Cream***[11]. With this authority in hand, counsel referenced the principle that the degree of strictness of proof was contextual, and depended on what was reasonable in the circumstances, but was not meant to derogate from the rigid formula of proof of special damages. As the claimant's claim was huge, he was required to comply with the highest degree of strictness to prove it. The court was asked, if it found

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[11] *Anand Rampersad* v *Willie's Ice-Cream Limited* Civil Appeal No 20 of 2002

that some pecuniary loss was experienced, to use the statutory minimum wage of $15.00 per hour under the Minimum Wages Order, 2014.

24. This court noted the submissions of both counsel and evidence called. First, the claimant's medical evidence spoke to an inability to function as a grass cutter, given his injury and now continuing disability that rendered him unable to make a fist or grasp tools. The fact that he had suffered a pecuniary loss was accepted by this court. As to the absence of credibility based on a failure to bring financial statements showing consistent income or regular deposits, this court was of a differing view. Grass cutters as other self-employed service providers in this jurisdiction, such as maxi-taxi drivers, would not usually issue receipts for jobs done. Some grass cutters might use a financial institution to save earnings, but many might not have a formal structure for savings. Taking your financial business to a bank or other financial institution would help prove a claim of loss of earnings, but the absence of this evidentiary connection or records would not compel an assessing court to rule that a loss of earnings claim could not stand. The court would turn to other types of evidence to corroborate this claim, bearing in mind the context, reasonableness and how courts have been guided to apply the demand for strictness of proof[12]. So it was not an issue of credibility or lack thereof that the claimant turned up empty-handed of receipts, deposit slips, bank statements or other documentary evidence. The practice by a grass cutter not to keep records was not unique to this claimant, but reflected a usual state of affairs among such workers in this jurisdiction. It was felt unreasonable to expect a grass cutter, in the context of how he operated working every day, of every week for the month and who might be of limited

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[12] *Anand Rampersad* v *Willie's Ice-Cream Limited*, supra

education, to keep records, in the event that an unanticipated tort was visited on him. It was unchallenged that the claimant was a grass cutter. This was confirmed by his grandniece, Christie Sealey. It was unchallenged that his income was based on cash transactions. It was unchallenged that the claimant suffered an injury to his left shoulder that barred him from fisting again or holding gardening implements properly. It was unchallenged that he had provided his service in the general area of La Romaine for at least forty years. He brought an independent and neutral person, Garth Gibbons, to attest to the regular use of his grass cutting services. This court acknowledged that the provision of this service or income might be affected by the season or number of jobs obtained daily. As such, this would be taken into account when ascribing the discount for contingencies, but would not operate to bar an award. The "huge" amount or size of the claim, in the absence of documentary evidence, would not necessarily disentitle the claimant from this award[13], especially as he had brought evidence to corroborate his claim that it was a service provided regularly to persons in La Romaine. Further, this court was impressed with the claimant as a witness, as he spoke plainly and honestly about the pecuniary impact of his injuries on him. It found no attempt by him to embellish his evidence but rather that he was candid, open and credible. It accepted that the claimant suffered loss of earnings and his evidence of his weekly range of earnings fell within the bounds of minimum wage. He could recover this loss of earnings, calculated using the minimum wage, minus a 25% discount to cover contingencies, such as illnesses and holidays, totaling $123,480.00 ($3,360.00 x 49 months – 25%).

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[13] *Ramnarine Singh* v *Johnson Ansola* Civil Appeal No 169 of 2008 where loss of earnings of $147,000.00 was approved by the COA based exclusively on oral evidence.

FUTURE LOSS OF EARNINGS

25. The claim for future loss of earnings was grounded on medical evidence. Dr Gentle was clear that the claimant could no longer work as a grass cutter. He also excluded any form of alternative employment; and stated clearly that returning to work, in any form of job, was doubtful. He was 62 years as at the assessment, and a grass cutter, who lacked a formal education.

26. Ms Simmons sought to convince this court that the claimant had failed to discharge his burden of proving his earnings. Counsel pinioned her arguments on two evidentiary pillars - the absence of documentary evidence of his earnings, made worse by his inconsistent viva voce evidence; and the dearth of evidence of his earning potential post-accident. The inconsistency hinged on the fact that he had admitted to providing an average of his weekly earnings ($700.00 - $1,000.00) for calculating his loss. Counsel then invited this court to use the claimant's evidence in cross-examination as a basis for concluding that he had failed to show total incapacity.

27. This court noted that as of the assessment, the claimant had not returned to work. Generally, medical evidence would influence any award of future loss of earnings, which, in this case, pointed to total incapacity to perform his previous job. Given the medical evidence, this court could not place any credence on the argument of Ms Simmons that there existed innumerable manual tasks that the claimant could still perform to earn an income. Notably, counsel neither identified these countless, manual jobs nor spoke to their availability to a worker, with the physical disability of the claimant. In this court's view, that submission was more surreal than helpful, and fell far short of the provision of some form of realistic assistance to this court in arriving at a quantum under this head of damages. Further, this court's

enquiry of the claimant, as to whether he could sweep yards in the neighbourhood to earn an income, was for clarification, as to the extent of his post-accident functioning as a manual worker, with use only of a right hand. It was neither a rejection of the medical evidence nor a conclusion that he was still capable of doing some form of physical labour. It came after his admission, when pressed by counsel during cross-examination, that he could sweep the house or steps, using his right hand. The medical evidence was clear that he could not hold small objects such as tools and handles with his left hand, and undoubtedly would have covered his inability to hold a broom handle. The court was asked, against the backdrop of the medical evidence, to hold that the limited function in the use of the left hand was not equated to complete loss of use of that hand. In this court's opinion, the innumerable manual jobs argument was spurious, weak and unsupported by any evidence before it. It begged the question as to which employer, in need of a handyman or manual labourer, would source that service from a worker who was deemed medically incapable of holding or grasping small implements with one of his hands? On the evidence, the claimant was disqualified medically from his job as a grass cutter and was without a formal education. There was nothing before this court to show that he could perform a non-manual or different job, or that he was qualified for any of the unnamed, innumerable jobs available to disabled labourers.

28. The claimant was entitled to future loss of earnings, calculated on the traditional multiplier multiplicand basis. In the view of this court, the claimant's evidence of his earnings as a grass cutter was not supported by documents, but he presented as a refreshingly truthful witness, who was not intent on hoodwinking this court as to his earnings. He sought to corroborate his earnings by calling at least one person who utilized his services and who

confirmed that he saw him regularly at work on yards in the La Romaine area. He also admitted that he had used his average weekly earnings to calculate his loss, demonstrating that he was not motivated by greed or the need to beef up his claim. Ms Simmons submitted that future loss of earnings should be worked out on the basis of the statutory minimum wage of $15.00 per hour and given his age, a multiplier of two be used. Ms Simmons' submissions were accepted. His future loss of earnings was calculated as $80,640.00.

29. Further, there was evidence that the claimant got a charitable grant for the period May to December, 2015 of $1,150.00 per month from the Social Welfare Office. Ms Simmons asked that this be discounted from his claim of loss of earnings. This court took guidance from and followed ***Darryl Damian Abraham* v *AG***[14] where Rahim J refused to discount such a sum.

ORDER

30. It is ordered that the third defendant do pay the claimant:
    (i) General damages of $85,000.00 with interest at the rate of 2.5% per annum from January 20, 2016 to March 20, 2019.
    (ii) Special damages of $147,080.00 with interest at the rate of 2.5% per annum from April 7, 2015 to March 20, 2019.
    (iii) Future loss of earnings in the sum of $80,640.00.
    (iv) Costs on the prescribed basis in the sum of $54,898.11.

Martha Alexander

Master

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[14] *Damian Abraham* v *AG* CV2011-03101 where Rahim J expressed the view that it was unfair and unreasonable for a wrong doer to share the benefit derived from payments to a victim in receipt of welfare. See *Williams* v *Devonish et al* HCA 5913 of 1983