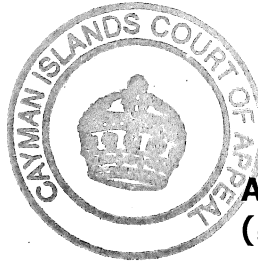


25-11-05

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

C.I.C.A. (Civil) # 15 of 2004
(GC Cause 150 of 2002)



BETWEEN

JEFF EATON

APPELLANT
(DEFENDANT)

AND

BIRTHRAM JOHNSTON

RESPONDENT
(PLAINTIFF)

BEFORE:

THE RT. HON. MR. JUSTICE E. ZACCA, P.
THE HON. MR. JUSTICE M. TAYLOR, J.A.
THE HON. MR. JUSTICE I.X. FORTE, J.A.

Appearances: Mr. Norman Hill Q.C. instructed by Associated Advocates Chambers for the Appellant and Alistair Walters instructed by Campbells for the Respondent.

Heard: 21st & 22nd July, 2005

Delivered: 25th November, 2005.

FORTE, J.A.

On the January 21, 2005, the appellant sustained several injuries, when the respondent negligently drove his motor vehicle into the pathway of his motor vehicle, along the West Bay Road. There was no dispute as to liability and the matter was heard as an Assessment of Damages.

This is an appeal against the Order made by Levers, J on the assessment. As recorded by the learned judge, the appellant suffered the following injuries:

1. Contusions to the right hand
2. Undisplaced fractured nasal bone

3. Sprain to the right shoulder

Having heard the evidence, the learned judge made the following awards:

Neck	\$25,000.00
Shoulder	\$10,000.00
Face/nose	\$ 2,000.00
Hand	\$ 4,000.00

Separate awards were made for (i) Loss of Earnings (\$383,225.00) (ii) Loss of Future Earnings (\$340,702.00) and (iii) Loss of Amenities (\$50,000).

The "final" Order is stated in the Judgment thus:

1.	Special damages	\$ 15,336.43
2.	Loss of Earnings	\$383,225.00
3.	Interest on 1 & 2	\$ 32,503.50
4.	General Damages	\$ 41,000.00
5.	Loss of future earnings	\$340,702.56
6.	Loss of Amenities	<u>\$ 50,000.00</u>
		\$862,276.49

Interest on general damages and amenities at 2% from date of service of writ.

Costs to the Plaintiff, to be agreed or taxed.

The appellant appeals that order on the following grounds:

"1. The award of damages to the Plaintiff is manifestly excessive and unreasonable and the result of the learned judge misdirecting herself on the evidence in respect of the following:

- (a) The injuries, which were caused by the accident on the 27th January 2002, namely

contusions to the right hand, undisplaced fractured nasal bone and sprain to the right shoulder.

- (b) The specialist qualification of the various doctors who treated and advised the Plaintiff on his injuries.
- (c) That only an orthopedic surgeon would be qualified to give an opinion on the need for surgery on the Plaintiff's neck, right shoulder and hand.
- (d) That the Plaintiff was recommended to see an orthopedic surgeon by Dr. Shafey to obtain an opinion on the need for surgery who recommended that the Plaintiff be seen by another orthopedic surgeon who specializes in surgery to the shoulder and hand.
- (e) The substance of the evidence of Mr. Chutkan on the injuries which the Defendant says were caused by the accident as well as his pre-trial report and evidence in relation to the Plaintiff's ability to continue work as a Tiler and musician.
- (f) The specialist qualification of Dr. Quartly to give the opinion on the cause of the various complaints of the Plaintiff made more than six months after the accident.
- (g) The evidence given and produced by the Plaintiff in an attempt to discredit Mr. Chutkan as well as the use by the Judge of his evidence relating to the Plaintiff's appearance as alert, in good spirit and showed no signs of depression as a basis for discrediting the findings of this expert witness.
- (h) The evidence that it was reasonable for the Plaintiff not to get an opinion from an orthopedic surgeon for the injury to his back,

shoulder and hand for approximately four years.

- (i) The evidence and report of Dr. Quartly, which was contradicted by the evidence and report of Mr. Chutkan.
- (j) The evidence of one of the Plaintiff's employers that after the accident the Plaintiff was employed as a Tiler and did the same work in a new condo development as he had done prior to the accident.

2. The trial judge erred in law in relation to the following:

(a) The effect of the breaches of the Immigration Law on the entitlement of the Plaintiff to rely on income earned while he worked without a work permit in the calculation of his pre-trial loss of earnings as well as loss of future earnings.

(b) The separate assessment of the General Damages claim for loss of amenities, the effect of which was to award the Plaintiff CI\$91,000.00 for General Damages.

(c) The award of CI\$41,000.00 for General Damages in respect of the injuries cause by the accident.

(d) The award of CI\$383,225.00 for loss of earnings and CI\$340,702.56 loss of earnings and loss of future earnings, respectively.

In spite of these seemingly numerous grounds of appeal filed, before us, the issues were confined to (i) the learned judge's treatment of the medical evidence, in so far as that evidence related to the question of whether the respondent should have mitigated his damages and (ii) the quantum of damages

awarded for loss of earnings, loss of future earnings and for pain and suffering and loss of amenities.

Before addressing these issues, two preliminary observations are necessary. Firstly, the circumstances under which an appellate court will interfere with an award of damages by a trial judge were explained by Lord Wright in the case of ***Davies v. Powell Duffryn Associated Collieries LD*** [1942] A.C. 601 when he stated at page 616:

"An appellate court is always reluctant to interfere with a finding of the trial judge on any question of fact, but it is particularly reluctant to interfere with a finding on damages which differs from an ordinary finding of fact in that it is generally much more a matter of speculation and estimate."

Lord Wright then cited, with approval (page 617), the following dicta of Green, L.J. in ***Flint v. Lovell*** (1935) 1 K.B. 354 at 360:

"In effect the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons, made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinions or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency."

Simply put, the Court of Appeal will not interfere if the trial judge has applied the principles of law correctly, has taken advantage of having seen and heard the witnesses and has awarded damages which are neither extraordinarily high nor extraordinarily low. These are the principles, which I accept as correct,

and which will be applied to the issues raised, in this regard, in the instant appeal.

Secondly, the manner in which the damages were awarded raises some concerns. Injuries to particular parts of the body are not *per se* heads of damage. It is therefore incorrect to calculate damages for '*injuries to the hand, shoulder and nose*', as the learned judge did. Support for this can be found in the dicta of Campbell J.A., in the Jamaican case of ***United Dairy Farmers Ltd v. Gouldbourne*** (1984) 21 J.L.R. 10, where damages were awarded for a "fractured femur" resulting in 1" shortening with 15% to 20% disability.

Campbell, J.A. said at page 15:

"Such disabilities or impairments were factors to be considered in considering a general award for pain and suffering, loss of amenities, handicap on the labour market and/or loss of earning capacity but *as an independent head of damage they were unknown to the law.* ...(emphasis added)

Pain, suffering and loss of amenities connote a total experience and it would indeed be a novelty for a trial judge to differentiate, for purposes of compartmentalizing the pain and suffering and loss of amenities attributable to organic brain damage, from pain and suffering and loss of amenities attributable to the fracture of the femur."

The award of general damages relates to *the pain and suffering* caused by the particular injuries and not to the injuries *per se*, as **the head of damage is in fact "pain and suffering and loss of amenities."**

This brings me to the question of the separate award made by the learned judge for loss of amenities. In speaking to the award of general damages, in the

case of ***George and another v. Pinnock and another*** [1973] 1 All E.R. 926

at 934, Sachs, L.J. stated:

"It is thus as well to say that whatever may have been the differing judicial views up to a few years ago and, indeed, up to 1970, as to whether a judge should simply award a global sum, or whether he should state in his judgment what are the main components of that figure, the modern practice since ***Jefford v. Gee*** [1970] 1 All ER 1202, (also decided in March 1970), is to adopt the second course. It is true that that adoption has to a considerable extent come into being because of the differing rates of interest applicable to different heads of damages under ***Jefford v. Gee*** decision. On the other hand, it is also in part due to the general adoption of that considerable body of judicial opinion which held the effect that plaintiff and defendant alike are entitled to know what is the sum assessed for each relevant head of damage and thus to be able on appeal to challenge any error in the assessments."

It is worth reiterating *that pain and suffering and loss of amenities* is one head of damage. It was so treated by Lord Denning, M.R. in the case of ***Jefford v. Gee*** [1970] 1 All E.R. 1202 at page 1209. The dicta of Sach, L.J. (*supra*) should not therefore be understood as separating pain and suffering from loss of amenities; it must be read in the context of all the heads of damage (such as (i) loss of future earnings and (ii) pain and suffering and loss of amenities), which make up the total award of general damages.

Having said that, however, it must be stated that in considering the merit of the challenge to the quantum of damages, a Court of Appeal must look at the global award to determine whether the amount awarded was extraordinarily high

or extraordinarily low, given the test adumbrated earlier. As Edmund Davis, L.J. said in *Povey v. WE & E. Jackson* [1970] 2 All E.R. 495:

"A more prudent course is to look at the damages awarded as a whole and not to seek to impeach a particular item unless it is, after careful consideration, demonstrably manifest that the global sum awarded, ought not to stand."

I now turn to the issues that call for resolution in this appeal.

1. Did the medical evidence demonstrate a failure of the respondent to mitigate his damages?

It was contended that the respondent failed to see an orthopedic surgeon, who specializes in hand/shoulder in spite of advice of one of the many doctors from whom he sought treatment.

In answering this question, here is what the learned judge stated:

"The medical advice in this case from all the doctors was that the patient should receive conservative treatment for surgery. The only step the Plaintiff failed to take was to visit a surgeon for the hand as advised by Dr. Blinn. Was this unreasonable in circumstances where the Plaintiff was being treated by several doctors, all of whom had advised conservative treatment which the patient followed. This recommendation by Dr. Blinn was the only one that was not followed. Remembering that this recommendation was in October 2003 and in the same month the Plaintiff saw Dr. Kester Need, Director of Neurological Rehabilitation and his recommendation was that the patient continue on current medication. He further recommended that he be followed and be seen by a psychiatrist on an ongoing basis for appropriate modification of his pharmacologic agents to manage his depression. He also categorically stated that at this point, the patient is not a surgical candidate for back or neck surgery. Had it been that the Plaintiff was told that this was his only option or this was an

option that must be followed in order to alleviate his pain and he refused to do so, the Defendant in this case would have discharged his burden. However, the Defendant apart from relying on Dr. Blinn's statement has produced no evidence to show that the Plaintiff acted unreasonably. I am persuaded by Dr. Quartly's evidence which strengthens the Plaintiff's case that he acted reasonably in following the doctors' advice and opting for conservative treatment.

The learned judge, in her reference to Dr. Quartly's evidence, must have had in mind the following statement, which came from Dr. Quartly:

"The issue of whether or not Mr. Johnston would benefit from surgical intervention needs to be addressed. He at least needs consultation with an academic spinal orthopedic surgeon and neurosurgeon. Generally speaking, if there is no evidence of active or ongoing vadiculopathy (nerve root injury) and/or a myelopathy and/or instability/fracture, surgical intervention in situations where there are multiple potentially symptomatic levels of dysfunction should be approached conservatively."

I have examined the reports of the many Doctors who saw and treated the respondent. I note that in every case, except for the reference by Dr. Blinn to a surgeon, the recommended treatment was medication. I am of the view that it is unnecessary to record here, in any detail, the recommendations for treatment by those doctors. I feel that it is only necessary to state that they never recommended surgery as a priority treatment, for the respondent's injuries.

The controversy on this issue arose, because the learned judge rejected the evidence of Dr. Chutkan, an orthopedic surgeon, who was called as a witness

for the appellant and instead accepted that of Dr. Quartly. Having examined all the reports of the other doctors and having also examined the respondent at a date in close proximity to the Assessment, Dr. Chutkan expressed the view that:

“Because of combination of neck and shoulder injury I would get an opinion from a hand surgeon who also does shoulder.”

He however also testified that he could not give an opinion on what a hand surgeon would recommend, but such a surgeon could determine whether pain could be corrected by surgical intervention.

Two conclusions must be drawn from this evidence:

- (i) the evidence of Dr. Chutkan does not categorically state that surgery would have resulted in the alleviation of the pain caused by the injuries;
- (ii) the respondent was entitled to accept the recommendation of the many doctors who treated him with medication (conservatively) especially given the uncertainty, as to what advice the hand surgeon would have given in respect of surgery.

Complaints have been made before us, concerning the rejection of Dr. Chutkan's evidence. I need only say, in that regard, that the learned judge, being the arbiter of fact, was entitled, having seen the witnesses and having examined all the doctors' reports and the circumstances under which they were given (e.g. the frequency with which the respondent was examined by them) to determine which of those opinions she accepted. As was stated earlier, it is difficult for this Court to overturn those findings, unless they were influenced by some erroneous statement of the law, or some misunderstanding or

misapplication of the evidence, particularly the documentary evidence. In this regard, I would conclude that the reason given by the learned judge for preferring the other medical evidence cannot be faulted. The learned judge stated:

"... Dr. Chutkan who gave viva voce evidence in addition to presenting a report, felt that he should have been referred and seen by an orthopedic surgeon shortly after the accident, in order to decide whether the continuing pain that he feels in his arms is from the neck or the shoulder. Dr. Chutkan concedes that if it is from the neck surgery would be difficult. But in order to isolate the area of concern, he felt that the patient should have seen an orthopedic surgeon shortly after the accident.

Dr. Chutkan does not necessarily state that surgery was an option. Dr. Chutkan says he saw the patient for close to one hour, the evidence from Mr. and Mrs. Johnston is that he saw them for half an hour. The Plaintiff's attorney submit that, without the time, it would be impossible for Dr. Chutkan to give a comprehensive report. I too find Dr. Chutkan's report not as detailed as it could be. It is, without doubt, not as comprehensive and as helpful as Dr. Quartly. An example of this, is that, although not claimed for specifically Mr. Johnston has complained of depression. Dr. Chutkan who saw the patient for no more than one hour comes to the conclusion that the patient was alert, in good spirit and showed no signs of depression. When asked by the Court on what basis he came to that conclusion, he said years of experience show a doctor whether a patient is depressed or not by his gait by his eyes, and by the manner of speech. ...

The Court cannot be assisted by a finding based on that sort of evidence."

The appellant was severely critical of the learned judge's assessment of Dr. Chutkan's evidence, particularly complaining that she appeared to have rejected his total evidence on the basis of his assessment as to whether the

appellant was suffering from depression when he examined him. Dr. Chutkan is an experienced orthopedic surgeon and the reasons he gave for saying that the appellant was not depressed, seems to be reasonable in the circumstances.

The learned judge, however, did not totally reject Dr. Chutkan's evidence. She quite correctly concluded that his opinion "doesn't fundamentally disagree with the other doctors, save and except for the fact that Dr. Chutkan who gave *viva voce* evidence in addition to presenting a report, felt that he should have been referred and seen by an orthopedic surgeon shortly after the accident etc." I have already dealt with the inconclusiveness of that opinion and find that it should not affect the quantum of damages awarded by the learned judge for pain and suffering.

In assessing the quantum of damages for loss of amenities the learned judge did rely on the evidence of other doctors as to whether the Respondent also suffered from depression. However, the nature of depression is such that it may manifest itself at one time and not at another.

I am therefore not persuaded that the award of damages should be affected in this regard.

2. Loss of Earnings

The basis of the complaint against the award for loss of earnings seems to relate to the fact that the respondent resumed his occupation, as a tiler, for a period of time. (In so far as that also affects the award for pain and suffering

and loss of amenities, that will be dealt with when I deal with that head of damages).

The complaint as it relates to the award for loss of earnings, is without merit. The respondent produced evidence, which the learned judge accepted, that for the three years preceding the accident he earned an average of CI\$140,000 per year, as a tiler. He maintained in his evidence that since the accident and up until the time of trial he could only work for 15 weeks, because of the pain that he suffered, as a result of the injuries received. He testified that he had to employ someone to help him with the "heavy" work. He undertook the job of tiling during that period against his doctor's advice but had to do so because of his poor economic circumstances. The learned judge accepted that evidence as factual and I can see no reason to interfere with the finding. In any event, the award granted under this head took into account, the amount earned during that period. The appellant however maintained that the fact that the respondent was able to work at all, contradicts his complaints of pain and suffering caused by his injuries. The learned judge, by her findings, must have accepted the following, which appears in the witness' statement of the respondent.

"1. Out of desperation and against medical advice I tried to do some tiling work for Woods. Although I managed to do approximately 40 hours of work (earning approximately CI\$1200), I was unable to work longer, could not complete the job and was left in a great deal of pain and discomfort as a result my hand 'locked up' and I dropped a bucket on my foot as I lost all strength and control of my hand. I immediately

made an appointment to see Dr. Marzouca who prescribed the different anti-inflammatory drugs, more pain killers and valium.

2. With the support of Dr. Quartly, I have recently started to take tiling work. I have hired an assistant to assist with the manual work and I am carrying out the tiling. My total gross earnings to date are CI\$24,675.00 averaging CI\$1,645.00 per week (CI\$6528 per month) on a part time basis. From that sum I pay CI\$400.00 to my assistant (CI\$1,245.00 per week. Therefore my net wages are CI\$18,675.00 for 15 weeks. Recently I passed out whilst working and had to be taken to hospital. I am not sure whether this might be related to my injuries." (emphasis added)

The respondent supported his claim for loss of earnings by documentary evidence which showed that he in fact earned an average of CI\$140,000 per year in the years 1998, 1999 and 2000. The amount earned by him, during the 15-week period after the accident and before the assessment, plus the \$1,200 were deducted from the claim.

I have however examined the mathematical calculations of the learned judge and find that there is an error in her judgment. On the face of the calculations set out therein, it would appear that the sum of \$480,250.93 ought to be corrected to \$431,064.93. Loss of wages for 42 months at \$11,600.00 per month was correctly calculated to be \$487,200.00. The learned judge thereafter subtracted the following sums:

- | | | |
|-------|----------------------------------|---------------|
| (i) | advance by the Insurance Company | \$84,100 |
| (ii) | amount earned | 1,200 |
| (iii) | amount earned for 15 weeks | <u>18,675</u> |
| | | \$103,975 |

Having made the subtraction she correctly arrived at the figure of \$383,225.00. The interest on that sum was agreed at \$32,503.50, which totals \$415,728.50. Added to that sum was the award for special damages, amounting to \$15,336.43 making a grand total of \$431,064.93, for special damages. She however arrived at the sum of \$480,250.93. In her final order, however, the Learned judge awarded the amounts stated in her judgment as follows:

1. Special Damages \$15,336.43
2. Loss of Earnings 383,225.00
3. Interest on 1 & 2 32,503.50

The total of these figures shows an award of a correct sum of \$431,064.93 and consequently no amendment need be made.

In those circumstances, I also find no reason to interfere with the award for loss of earnings.

3. Loss of future earnings

In granting this award, the learned judge gave the following reasons:

"It is not disputed that the Plaintiff suffered serious injuries. With regard to future earnings I take into account his age and the fact his movements are restricted to the extent that he cannot tile the floors not stoop sufficiently to allow him to engage in the activities of tiling or indeed playing any instrument for prolong periods of time. In all the circumstances, therefore, I would in my award of this area use a multiplier of 5.48 to retirement age. His net loss of wages came to \$6181 per month which includes the

additional expenses of physiotherapy and costs of prescription. From this sum I would allow \$1,000 for expenses leaving the sum of \$5,181.00 as available to the Plaintiff. The sum awarded for further loss of earnings therefore is \$340,702.56."

The challenge of the appellant was concentrated on the contention that the only entitlement of the Respondent under this head should be the \$400.00 per month which he had to pay for an assistant. This is unacceptable, given the other physical restrictions that the respondent had to undergo in performing his occupation as a tiler because of his permanent partial disability (p.p.d.) as testified to by the doctors.

I would hold that the method used by the learned judge in assessing this award was correct. It was calculated on the basis that the respondent would suffer the disability acquired from his injuries for the rest of his working life. In those circumstances, no valid complaint can be made in respect of the multiplier of 5.48, arrived at by the learned judge, it being the number of years that the respondent would be able to work until his retirement at age sixty-five.

I am prepared to accept the sum used by the learned judge, as the multiplicand, (i.e. the net loss of earnings) in order to calculate the sum to be awarded for loss of future earnings. This sum of \$5181.00 per month converts to a figure of \$62,172.00 per year. A calculation using the figure as the multiplicand would result in a total of \$340,702.56. However, in awards such as these, which are to some degree based on estimates and speculation as to what

may or may not happen in the future, allowance must be made for contingencies: for example, the possibility of the respondent dying before the estimated time, or recovering full ability in spite of the doctors' opinions, or having a change of occupation with improved earnings. Consequently, also taking into consideration the benefits of the immediacy of payment, a reduced figure ought to be awarded. I would conclude taking contingencies into account, that the sum of \$340,702.56 ought to be reduced by one-third, resulting in an award of \$237,135.04.

I should add that I find no merit in the contention that the respondent was, at a particular time, working in breach of the Immigration Laws and consequently the evidence of his earnings at that time should not have been taken into account. In any event, there was no concrete evidence that he was in fact in breach of those laws.

3. Pain and Suffering and Loss of Amenities

I again make reference to my concern in relation to the manner in which the Learned Judge dealt with this head of damage.

However, it is the global sum that has to be examined to determine whether the sum awarded was extraordinarily high or low. The appellant contended that the award was manifestly excessive. The award of \$41,000 in respect of the pain and suffering relating to the injuries to the neck, shoulder, nose and hand has to be looked at in the context of previous awards and

together with the award for loss of amenities for which a sum of \$50,000.00 was awarded separately. There is evidence upon which the Learned Judge could have found, as she did, that the respondent suffered serious pains to his back, shoulder, head and hand, as a result of the injuries he received in the accident. It is of great importance in this regard also, that the injuries were such as to create a permanent partial disability of 15% (per Dr. Chutkan).

In arriving at her conclusion, the learned judge examined the cases of ***Clarke v. Commissioner of Police of the Metropolis*** January 10, 1997 Kemp R. 89 December 2003 page 55063 at E2-009 (injury to the neck) which, in her view, was "factually close to this particular set of facts, as far as the neck injury is concerned". In that case, as the learned judge pointed out, there was a whiplash type injury to the cervical spine, bruising, headaches and the plaintiff suffered pain in the neck on a daily basis and intermittent headaches and restriction on movement in the shoulder. The sum of twenty-three thousand dollars (\$23,000) was awarded. The learned judge also relied on the case of ***Yamoah v. Woolworth PLC*** February 12, 1996, Kemp R. 87 June 2003, page 5806 2 in which there was a dislocation of the right shoulder and a rotator cuff tear. A sum of \$9,996.00 was awarded. The learned judge's awards for "Neck" and "Shoulder" of \$25,000 and \$10,000 respectively demonstrate that she followed these two cited cases.

In respect of the injury to the nose, the learned judge stated:

"As regards to the face and the nose, the sort of awards for nose injuries are in the region of \$1500 to \$500."

Thereafter, she proceeded to make an award of \$2,000 for face/nose. This approach is misconceived.

Pain and suffering do not relate, in circumstances such as these, to each injury, but naturally, to all the injuries. As pointed out earlier in this judgment, damages are not awarded for an injury *per se*, but for the pain and suffering caused by all the injuries, so that the cases relied on by the learned judge must have had as the basis of those awards, the pain and suffering caused by those injuries i.e. "Neck, Shoulder Face/Nose." In the instant case, the respondent's injuries resulted in his suffering pain to his back, head, shoulder and hand and it is for that pain and the effect it had on him that he should be compensated.

The complaint that Loss of Amenities should have been considered as part of the head of general damages (i.e. "pain and suffering and loss of amenities") is valid. It is necessary to see what consideration was given to this award and to determine whether the global figure granted under this head (\$91,000) can stand. Here is how the learned judge dealt with the award for Loss of Amenities.

"This finally leaves one with damages for loss of amenities such as depression, headaches, lack of sexual desire etc. The Plaintiff no doubt experienced severe pain and although Dr. Chutkan fixes the disability at fifteen percent (15%) the Plaintiff is still not performing his profession to the fullest. In considering an award under this head, it must not be forgotten that the Plaintiff has also been awarded special damages for loss of earning up to the date of trial. I therefore consider the sum of \$50,000 for loss of amenities as an appropriate amount."

It appears that the learned judge was duplicating the awards, when she described headaches, for example, as a loss of amenities. The respondent in his evidence testified how he was affected in this regard. He said he could no longer play with his child, dance or have sex. Those are matters, which if accepted as true, would come under the heading of "loss of amenities". The learned judge seemed to have treated pain and suffering as a loss of amenities. This is wrong.

I am of the view that had the learned judge approached these awards as is required, the award for pain and suffering and loss of amenities would have been reduced. I conclude that an award of \$91,000, in the circumstances of this case, is extraordinarily high and find that a sum of \$70,000 would be appropriate. This award is accordingly reduced.

For these reasons, I would allow the appeal in part, so that (i) the award for loss of future earnings is varied to \$237,134.04 and (ii) the award for pain and suffering and loss of amenities is also varied to \$70,000.

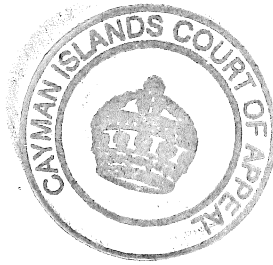
I would make the following awards:

1.	Special damages	\$ 15,336.43
	Loss of earnings	\$383,225.00
2.	Interest on special damages and loss of earnings	\$ 32,503.50
	Pain and suffering and Loss of amenities	\$ 70,000.00
3.	Loss of future earnings	<u>\$ 237,135.04</u>
		\$ 738,199.97

Interest on general damages at 2% from date of service of the writ. Counsel are invited to address on costs.

Zacca, P.

Taylor, J.A.



Forte, J.A.