

**IN THE SUPREME COURT OF BELIZE, A.D. 2016**

**CLAIM NO. 490 of 2015**

**RUDOLFO RUANO**

**CLAIMANT**

**AND**

**SHERAYNE RAMCLAM**

**DEFENDANTS**

**ARMANDO MUSCHAMP**

**BEFORE THE Honourable Madam Justice Sonya Young**

Written submissions received

28<sup>th</sup> January, 2016

Decision delivered

15<sup>th</sup> February, 2016

Mr. Nicholas Dujon, SC for the Claimant.

**Keywords: Assessment of damages – Personal injuries – After default judgment**

**DECISION**

1. This is an exparte assessment of damages following the entry of a default judgment on the 11<sup>th</sup> November, 2015. Mr. Ruano claims damages for personal injuries and loss, special damages totalling \$15,946.11, interests and

costs. Being ready to prove his damages, he relies on his affidavit and a number of exhibits annexed thereto. Counsel presented brief written submissions on his behalf.

2. Mr. Ruano's injuries were occasioned as a result of a collision on Olivia Sentino Street, Punta Gorda, between his motor cycle and Mr. Muschamp's motor car which was being driven by Sherayne Ramclam (Mr. Muschamp's servant or agent).
3. From the state of the evidence presented I refer to the ancient case of ***Bonham Carter v Hyde Park Hotel Ltd (1948) WN89, 92 Sol Jo 154, KBD:***

*“Plaintiff must understand that if they bring actions for damages it is for them to prove their damage, it is not enough to write down the particulars, and, so to speak, throw themselves at the head of the court saying “This is what I have lost. I ask you to give me these damages.” They have to prove it.”*

**Special Damages:**

4. At the date of the accident, (3<sup>rd</sup> August, 2014) Rudolfo Ruano was 24 years old and worked as a field officer in the Agricultural Department earning \$738.16 per month. His bank account statements prove this salary. He says he has been unable to work since the accident and was “laid off” as a result of his injuries. But he does not state the date from which he was laid off nor does he attempt in any way to prove same. He claims \$9,975 as lost wages. The bank statements indicate that he was being paid up to the end of January, 2015. He shall have loss of earnings from that date to the date of the filing of the claim (a total of six months).

5. The assessment of loss of earnings is not made by the length of time the Applicant has been unable to work. Rather, it relates to the exact calculable loss which the Applicant has proven. In this case it has been proven as \$4,428.96.
  
6. His motor bike was damaged and will cost \$782.00 to repair. He supports this sum by an estimate provided by Juan & Sons Motor Parts. That sum is accepted and is accordingly awarded. He has not stated the cost to replace his helmet although that could have been a reasonable claim.
  
7. He also presented receipts which he says total \$5,189.11 for medical and other expenses. These are all in Spanish without translations – a most unacceptable state of affairs. The first six seem to be a deposit and five withdrawal slips related to Blanca Angelica Gonzalez Garcia and have not been connected in any way to Rudolfo Ruano and his medical or other expenses. They are rejected. Then there are three receipts which seem to be medical, two bear the Claimant's name and were incurred after the accident. Those are accepted:  
Receipt dated - 6.8.14-Q60.00  
Receipt dated - 29.8.14-Q23.00  
Totalling BZ\$24.41 using the exchange rate provided by the applicant of \$1.00 – Q. 3.40.
  
8. The other receipt dated 7.8.14 bears the name Blanca Gonzalez and has not been connected to the Claimant in any way. That is likewise rejected.

9. The remaining ten receipts seem to be for monthly rent received from the Claimant for premises in Guatemala. They have not been explained either. Perhaps Mr. Ruano had cause to move temporarily to Guatemala because of his injuries. If that is so, he has not stated it. Moreover, in the calculation of accommodation a deduction ought to be made to represent what he would have normally spent. *“Board and lodgings are things which the Claimant would have to pay for in any event; and he is not entitled to recover a sum in excess of his real loss.”* **Munkman on Damages for Personal Injuries and Death 11<sup>th</sup> Ed 13.19.** He has presented no evidence to indicate whether he continued to maintain his home elsewhere. *Shearman v Folland(1950) 2 KB 43* states clearly that no deduction ought to be made in those circumstances.
10. I find that there is insufficient evidence to establish the need; that is, to prove whether this particular rental expense was reasonable in the circumstances, has been properly incurred and should be allowed. It is therefore rejected.

**Injuries:**

11. There is exhibited a single report from Dr. John Waight an orthopaedic and general surgeon. That report is undated but shows that the Claimant was assessed on Saturday 8<sup>th</sup> August, 2015. It is clear from the report that Dr. Waight did not have care of the Claimant from the time of the accident. He does not indicate whether he reviewed notes or was simply informed by the Claimant of his medical care since the accident.
12. Nonetheless, the x-ray the good doctor examined and discussed, supports the fact that the Claimant’s right leg had been fractured at the distal third of the tibia and had been fixed, through surgical approach, with an intra-medullary

interlocking rod. That fracture bends forward and showed an inadequate union of the bone. This resulted in an *“obvious anterior angulation deformity”* which caused Mr. Ruano to walk *“with a pronounced limp favouring the right lower limb.”*

13. It was the Doctor’s opinion that Mr. Ruano received wounds to the right upper and lower limb as a result of the accident. Those have healed with permanent scars. He also maintained that the fracture, described above, is *“incompletely healed in a displaced unacceptable position and Mr. Ruano is still experiencing significant pain at the fracture.”* The pain seems more pronounced when weight bearing. Mr. Ruano himself describes his past pain as *“a considerable degree”* and his continuing pain as *“a lot.”*
14. The Doctor informs that future surgery would be necessary to correct the deformity and promote the union of the fracture. The implant would have to be removed, the tibia re-broken (osteotomy), followed by further internal fixation and the application of a bone graft (taken most likely from his pelvis). All this at a cost of \$10,000. After surgery Mr. Ruano would have to have a series of rehabilitation exercises with a physical therapist.
15. It is clear that Mr. Ruano has suffered considerable pain and that on the road ahead he is poised to encounter considerably more. He must be properly compensated for same. However, he cannot be compensated for the deformity and the cost to correct it. The court considers too that with a lump sum payment Mr. Ruano would be able to invest and yield a return overtime.

**General Damages:**

**Pain and Suffering Loss of Amenities:**

16. Mr. Ruano spent three days at the KMHM and a further five days at a Guatemalan hospital where he underwent surgery. He continues to experience a lot of pain in the leg. The Doctor opines that even after corrective surgery he would have a 5% total body disability as a result of the injuries he sustained. Mr. Ruano stated that he can no longer play football, hunt or fish. He has lost some of what brought joy to his life. There is scarring to the upper and lower limbs but no evidence is provided of the Claimant being affected by same. As comparable awards counsel presented:

*Jose Alvarenga and Wendy Hernandez v Madrid Cruz Claim No. 987 of 2009* – fracture of left femur occasioning two and possibly three surgeries - \$55,000.00. Minimally displaced fracture of the pelvis and compound fractures of the left tibia and fibula - \$50,000.00.

*Albert Idelfonso v Ercelia Wagner and Gabriel Villafranco Claim No. 131 of 2014* – closed right humeral fracture and an open fracture to right femur, two surgeries; complicating bone infection, and a further corrective surgery necessary - \$50,000.00.

17. Having considered both cases and the numerous others discussed in each, I award the sensible and fair sum of \$40,000.00 for Mr. Ruano's pain and suffering and loss of amenities.

**Future loss of earnings:**

18. Mr. Ruano has been unable to work since he was injured. The Doctor says that after the corrective surgery Mr. Ruano would not be able to engage in

remunerative employment for a further period of six months. This is certainly temporary only. The Claimant has not stated what his previous job entailed or whether he would be capable of doing similar work on recovery. There is likewise no proof of his inability. I do not wish to make wild and baseless assumptions. *Munkman on damages* (ibid) when discussing employment issues in personal injury cases stated at paragraph 18.54:

*“The Claimant should set out his employment history and state what jobs he cannot now do ... and it is the Claimant who may have to comment on issues of employability and prospects in his line of work. As long as these matters are done briefly, and are confined to issues of the fact, they should lay the foundation upon which the court can make an award.”*

19. The court therefore accepts that with only a 5% total body disability, he would be able to resume some work. He is young, his education level is unknown but his prospects ought not to be dim. I will use his previous salary with a multiplier of 1.5 years since the surgery need not be delayed and his incapacity should continue for no longer than is stated. I award \$13,286.88.

**Future medical expenses:**

20. Mr. Ruano would be awarded the sum of \$12,520.00 as submitted for the further medical intervention - \$10,000.00 for the procedure and \$2,520.00 for the physiotherapy.

**21. IT IS HEREBY ORDERED:**

1. Special damages is awarded in the sum of \$5,235.37 with interest at the rate of 3% per annum from the 3<sup>rd</sup> August, 2014 to 15<sup>th</sup> February, 2016.

2. General Damages is awarded in the sum of \$65,806.88 with interest at the rate of 3% from the 3<sup>rd</sup> August, 2014 to 15<sup>th</sup> February, 2016.
3. Costs on the prescribed basis calculated to be \$10,419.35 to the Claimant.

**SONYA YOUNG**  
**JUDGE OF THE SUPREME COURT**