IN THE COURT OF APPEAL OF BELIZE A.D. 2024
CIVIL APPEAL NO. 25 OF 2021

BETWEEN:

ISABEL GUADALUPE BENNETT

Appellant

AND

(1) JAMES HENRY ALEXANDER WILLIAMS JR
D.B.A. JAMES BUS LINE

1st Respondent

(2) OSCAR CAL

2nd Respondent

BEFORE:

Honourable Mme. Justice Minnet Hafiz-Bertram	President
Honourable Mme. Justice Marguerite Woodstock Riley K.C.	Justice of Appeal
Honourable Mme. Justice Sandra Minott-Phillips K.C.	Justice of Appeal

Appearances:

Ms. Priscilla Banner for the Appellant
Ms. Nazira Myles for the 1st and 2nd Respondents

2024: June 24
December 13

JUDGMENT

[1] **Minott-Phillips, J.A.:** This is an appeal of the quantum of damages awarded by James, J in a personal injury claim brought by the Appellant, Isabel Guadalupe Bennett, ("Ms Bennett") against the 1st and 2nd Respondents, James Henry Alexander Williams, Jr., doing business as James Bus Line ("Mr. Williams"), and Oscar Cal ("Mr. Cal"), respectively.

[2] Mr. Cal was the driver of a motor vehicle owned by Mr. Williams. Ms Bennet, a passenger in the vehicle, was injured when it collided with another motor vehicle. There was an Ancillary Claim brought by Mr. Williams and Mr. Cal against the owner and driver of the other motor vehicle seeking indemnification and/or a contribution in the event they were found negligent. That Ancillary Claim was dismissed and forms no part of this appeal.

[3] James, J found Mr. Cal and Mr. Williams liable to Ms. Bennett in negligence for the collision and awarded her damages against them. The material parts of the specific order made by James, J are:

a. Judgment is granted to the Claimant against the 1st and 2nd Defendants.

b. The 1st and 2nd Defendants are to pay to the Claimant special damages assessed at BZD $2,869.00, plus interest, at the statutory rate of 6% from the date of the accident being the 25th March, 2014 to the date of judgment.

c. The 1st and 2nd Defendants are to pay general damages assessed at BZD $25,000.00, plus interest, at the statutory rate of 6% from the 25th March, 2014 to the date of judgment.

d. The 1st and 2nd Defendants are to pay prescribed costs to the Claimant.

[4] In this case, it is Ms. Bennett, (the successful Claimant) who is the Appellant. Although in her Notice of Appeal, Ms. Bennett states that she appeals against the whole decision, that position is amended in her written submissions which state:

> *"There is no appeal by the Appellant and no cross appeal by the Respondents with respect to the findings of liability by the learned trial Judge, i.e. that the Respondents owed the Appellant a duty of care and by virtue of their negligence, they breached that duty. The challenge to the learned trial Judge's decision in this appeal*

therefore relates to his determinations and rulings with respect to general and special damages."

[5] Thus, it is the awards of damages only that are the subject of this appeal. Ms. Bennett contends that the amounts of General and Special damages awarded to her by James, J are too low and should be increased. The Respondents, Mr. Williams and Mr. Cal, disagree and ask this Court to dismiss Ms. Bennett's appeal.

[6] Because this appeal is concerned solely with the quantum of damages awarded to Ms. Bennett by James, J as compensation for her injuries sustained in the motor vehicle collision, the details of how the collision occurred are provided, predominantly, as background. They are that on 25 March 2014, Ms. Bennett was a passenger in a bus driven by Mr. Cal (as an agent of Mr Williams). The passenger bus collided with an 8-wheeler tractor with a Rome Plough being towed by an 18-wheeler Towhead, causing Ms. Bennett to sustain injuries as a result of the collision.

[7] Although the firm of Courtenay Coye, LLP represents Ms. Bennett in this appeal, she was represented in the High Court proceedings below by The Law Offices of Nikao. The firm, Myles & Banner has represented Messrs. Cal and Williams throughout.

[8] In her Statement of Claim, Ms. Bennett detailed 15 injuries sustained as follows:

i. Large Retroperitoneal Hematoma to the Claimant's liver;
ii. Minimally displaced fractures of her left transverse processes of L2, L3, L4, and L5 and a comminuted fracture to the Claimant's left sacral wing;
iii. Atlantoxical subluxation with subtle fracture of the fourth-vertebral body with minimal posterior displacement and narrowing of C3-C5 intervertebral space.

iv. Free fluid in the Claimant's pelvic cavity about 100cc in the Morrison space around the gallbladder.
v. Diffuse hyperechoic image on the spleen in possible relation with spleen contusion.
vi. Weakness in the Cervical, Lumbar, and Pelvic Regions.
vii. Antalgic Gait.
viii. Pain restricting the Claimant's full lumbar spine.
ix. Pain restricting the Claimant's Left Hip Flexion and Posterior Pelvic Motions.
x. Sequelae with Diastis of Rectal Abdominal Muscles and Deformity in Fat and Skin.
xi. Deformity of the left renal region as a result of fat necrosis and fluid collection of 8cc.
xii. Diffuse Myofascial Pain Syndrome.
xiii. Michle Imbalance Syndrome.
xiv. Rotoscoliosis of 7L Spine.
xv. Accennuated Lumbar Lerdais.

The question of whether these pleaded injuries were sustained and, if so, the effect of them was intended to be determined by the Judge with the assistance provided to him by expert medical evidence. This is clear from the order made by James, J on April 13, 2021, on Ms. Bennett's application to the court for the appointment of medical expert witnesses.

[9] It is a feature of this case that, ultimately, there was no expert opinion tendered into evidence. The Judge noted that:[1],

> *"The Claimant was given several opportunities to provide this expert evidence. This included giving the Claimant leave to adduce expert opinion two days before a trial, adjourning the trial to give the Claimant opportunity to get that expert opinion. An extension of*

[1] At paragraphs 23-28 of his judgment.

time to submit those expert reports was given until the second day of the trial to bring the expert to tender that evidence and be cross-examined. The Claimant made an application [which was granted] to have expert medical evidence prepared by two doctors, Dr. Cervantes and Dr. Quetzal Magana but was unable to secure their evidence. Dr. Quetsal's report did not comply with the CPR and as such was struck out at the commencement of trial.

In relation to the expert report of Dr. Cervantes was submitted to the Court but he did not appear at the trial to be cross-examined. The Claimant argues that Dr. Cervantes' Expert Report should be taken into account even though he was not presented to the Court for cross-examination. The Defendant objected to the expert report since Dr. Cervantes relied on documents which were not disclosed to the Defendants and did not form part of the joint instructions to him… The Claimant's attorney at the trial said that he was not calling Dr. Cervantes and not relying on his report. The Claimant chose not to rely on any expert medical opinion evidence.

The Claimant argued that the Court could rely on the medical reports attached to the Witness Statement of the Claimant. I disagree, although the medical records attached to the Claimant's Witness statement contain the opinions of physicians who examined and treated the Claimant, in the absence of expert reports as required by CPR Part 32, I cannot rely on the records as evidence of those opinions. These reports were also not accepted by the Defendants nor was any hearsay notice provided.

The failure of the Claimant to call medical evidence leaves this Honourable Court in a situation where it is being called to decide on the nature and gravity of the resulting physical disability; the pain and suffering which has been endured and the extent to which the Claimant pecuniary prospects have been materially affected, without this Court having the benefit of expert opinion evidence on the matter."

[10] I have quoted so extensively from his written reasons because it is important to appreciate the challenging evidential context within which James, J., was required to conduct his assessment of the quantum of damages to be awarded to Ms. Bennett. Although accepting that not every injury requires expert medical evidence, James, J. said[2] the absence of it

[2] At paragraph 35 of his judgment

"… means I have to evaluate the evidence and determine what evidence of damage I can accept."

[11] Ms. Bennett made no claim in her pleadings for future medical expenses or loss, and so she was barred from claiming damages under those heads[3]. This position expressed by James, J was accepted as correct at the hearing before us and not the subject of challenge.

[12] The grounds of appeal are that:

a. The Learned Trial Judge erred in law and misdirected himself in:

i. failing to find that the Appellant was entitled to special damages in the sum of BZ$36,533.00 plus interest at the statutory rate of 6% from 25 March 2014 to the date of judgment, as such a finding is against the weight of the evidence and the law;

ii. awarding general damages to the Appellant only in the sum of BZ$25,000.00 plus interest at the statutory rate of 6% from 25 March 2014 to the date of judgment, as such a finding is against the weight of the evidence and the law;

iii. failing to provide reasons for the quantum of special and general damages awarded and in particular in failing to consider the damages which should be awarded to the Appellant under the specific heads of general damages.

[3]Paragraph 51 of the judgment

iv. failing to consider the expert report or portions of the expert report of Dr. Andre Cervantes in determining the award of general damages to be made in the Appellant's favour.

v. failing to award the Appellant a reasonable and/or appropriate sum for the special and general damages suffered by the Appellant, plus interest at the statutory rate of 6% from 25 March 2014 to the date of payment of the damages in full.

vi. finding correctly that medical evidence is not absolutely necessary to prove damages yet in proceeding to minimize the Appellant's damages notwithstanding that there was sufficient evidence to justify the grant of a larger award of damages.

b. The findings of the Learned Trial Judge were wrong in law and against the weight of the evidence.

[13] One of the issues considered by the House of Lords in the case of ***Davies v Powell Duffryn Associated Collieries Limited***[4] was whether any of the sums awarded to the appellants by the trial judge and affirmed by the Court of Appeal was so inadequate as to call for revision. On that issue, Lord Wright, in his judgment, said the following[5]:

> *"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. No doubt this statement is truer in respect of some cases that of others.*
>
> *…Where … the award is that of a judge alone, the appeal is by way of rehearing on damages as on all other issues, but as there is*

[4] [1942] AC 601 at 609
[5] At 616-617

generally so much room for individual choice so that the assessment of damages is more like an exercise of discretion than an ordinary act of decision, the appellate court is particularly slow to reverse the trial judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide is given by Greer, LJ in ***Flint v Lovell***[6]*. 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 opinion 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."*

[14] Affirmation of that approach is provided by the Judicial Committee of the Privy Council (sitting in its Trinidad and Tobago jurisdiction) in the case of ***Calix v Attorney General of Trinidad and Tobago***[7] in the dicta of the court delivered by Lord Kerr who said:

> *"It is well settled that before an appellate court will interfere with an award of damages it will require to be satisfied that the trial judge erred in principle or made an award so inordinately low or so unwarrantedly high that it cannot be permitted to stand. In* ***Flint v Lovell***[8]*, Greer LJ said:*
>
> > *"In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."*
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> *A statement to like effect was made by Viscount Simon in delivering the judgment of the Privy Council in* ***Nance v British Columbia Electric Rly Co Ltd***[9]*:*

[6] [1935] 1 KB 354 at 360
[7] (2013) 82 WIR 479 at 490, letter h [para 28] to 491, letter d [para 29]
[8] ante
[9] [1951] AC 601 at 613

> *"Whether the assessment of damages be by a judge or a jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then, before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (**Flint v Lovell**, approved by the House of Lords in **Davies v Powell Duffryn Associated Collieries, Ld**)."*

[15] That is the approach I take in considering whether the Judge applied a wrong principle, or whether any of the sums awarded to Ms. Bennett by James, J is so inadequate as to call for revision.

[16] In doing so, it is both convenient and economical for me to first address the ground of appeal that James, J erred in law and misdirected himself in failing to consider the expert report or portions of the expert report of Dr. Andre Cervantes in determining the award of general damages to be made in the Appellant's favour. Dr. Cervantes was one of two Belizean doctors (the other being Dr. Magaña) appointed by the court as expert witnesses pursuant to Part 32 of the CPR upon a late (post-CMC and 2 days before the scheduled trial dates of 14 & 15 April 2021) application made by Ms. Bennett. The lateness of the application caused the scheduled trial dates to be vacated and new trial dates set for 9 & 10 June 2021[10]. In making that order James, J, while noting that the general requirement is that the application to appoint experts should be made at the Case Management

[10] The written reasons dated 12 April 2021 and order dated 13 April 2021 of James, J on the Application for Expert Evidence.

Conference, expressed his satisfaction with the compelling reasons advanced by Ms Bennett for making her application late[11]. He then said:[12]

> *"In determining whether this evidence is reasonably required to resolve the proceedings justly I have considered the pleaded case and the information which the expert proposes to give and find one of the proposed experts will be giving evidence on matters not part of the pleaded case of the Applicant. I will therefore grant permission for two of the experts proposed, i.e. Dr Andre Joel Cervantes, MD and Dr Miguel Magaña, MD, but permission will not be given to Dr Michael Medina, MD."*

So it is that, well in advance of trial, the parties were aware that James, J wished to be assisted in his task by the expert opinion evidence of Drs Cervantes and Magaña. The order he made was in the following terms:

a. The Court grants permission for Dr. Andre Joel Cervantes and Dr. Miguel Magaña to be appointed as expert witnesses pursuant to Supreme Court (Civil Procedure) Rules Part 32.

b. The expert witnesses shall prepare their report and give any evidence solely as it relates to injuries sustained at the time of the collision. No evidence of future injury, medical procedure or expenses will be accepted into evidence.

c. Parties are to give joint instructions to the experts by April 19, 2021.

d. The Expert Report is to be delivered to the court by May 3rd, 2021.

e. Parties may submit questions to the Experts by May 17, 2021.

f. Responses to the Parties' questions are to be filed by May 28, 2021.

[11] Ibid, at paragraph 19 of his written reasons of his Ruling on the Application for Expert Evidence.
[12] Ibid, at paragraph 22 of his written reasons.

g. The trial dates of April 14th and 15th have been vacated and the trial be set for June 9th and June 10th, 2021, at 9:30 am.

h. Costs are awarded to both sets of Respondents in the sum of BZD $2,000.00 each.

[17] It was conceded by Ms. Bennett (through her counsel) that the report that Dr. Magaña presented was not in an acceptable form and, therefore, not admissible as evidence. Ms. Bennett submitted, however, that the report that Dr. Cervantes presented was in acceptable form. She acknowledged, however, that there were objections to its admission on the basis that it relied on documents that were not disclosed to the Defendants and did not form part of the joint instructions to him. Her submission that Dr. Cervantes' report was in acceptable form does not accord with the specific finding by James, J. The judge did not find Dr. Cervantes' report to be in acceptable form as it did not contain a statement at the end that he understands his duty to the court as set out in Rules 32.3 and 32.4, or that he had complied with that duty[13]. The judge was of the view those omissions could be cured if the doctor had given oral evidence. However, the doctor did not appear at the trial.[14]

[18] CPR 32.7 states:

> *(1) "Expert evidence is to be given in a written report unless the court directs otherwise.*
>
> *(2) This rule is subject to any enactment restricting the use of "hearsay evidence".*

[19] CPR 31.1 provides:

> *(1) "A party who wishes to rely on evidence at trial which –*

[13] Paragraph 25 of the judgment.
[14] Ibid.

a. is not to be given orally; and

b. which is not contained in a witness statement, affidavit, or expert report,

must disclose his intention to the other parties in accordance with this Rule.

…

(5) Where the evidence forms part of expert evidence, the intention to put in the evidence must be disclosed when the expert's report is served on the other party."

In alluding to the Defendants' objection to the expert report of Dr. Cervantes, James, J specifically referenced the disclosure requirement of CPR 31.1(5)[15]. He also specifically referred to CPR 32.13(4) & (5)[16] which provide that:

- *"where expert evidence refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports.*

- *If it is not practicable to provide a copy of the documents referred to in paragraph (4), such documents must be made available for inspection by the other party or any expert instructed by that party within 7 days of a request to do so."*

Another factor recounted by James, J as being pertinent to the issue of whether the court should rely on the written report of Dr. Cervantes without requiring him to be available for cross-examination, was that the Defendants had made it clear they wanted to cross-examine Dr. Cervantes on matters relevant to the proceedings, and that the joint instructions he received required him to make himself available for court hearings[17]. My understanding from the judgment is that, before James, J could rule on the Defendants' objection to the court relying on the

[15] Paragraph 24 of the judgment.
[16] Ibid.
[17] Paragraph 26 of the judgment. See also paragraph 8 (v) of the Terms of Reference given by the parties jointly to Dr Cervantes.

Expert Report of Dr. Cervantes, Ms. Bennett's counsel at the trial said he was not calling Dr Cervantes and not relying on his report. As James, J. put it,

> *"The Claimant chose not to rely on any expert medical opinion evidence."*[18]

[20] As the report submitted to the court by Dr. Cervantes was not in proper form (i.e. CPR compliant), and as:

a. he did not make himself available for the court hearing as he agreed with the court and the parties that he would,

b. he relied on documents not disclosed to the parties,

c. Ms Bennett's counsel indicated expressly that he would forego calling him to give oral evidence and would not be relying on his report;

I cannot accept the submission made on Ms. Bennett's behalf in relation to this ground that the Judge erred in law and misdirected himself in failing to consider the expert report of Dr. Cervantes or portions of it in determining the award of general damages to Ms. Bennett. It was Ms Bennett who, through her counsel at the trial, opted not to rely on the evidence of Dr. Cervantes, oral or written. That course was adopted by her before the Judge was able to rule on the objection to the report being admitted without the doctor making himself available for cross-examination.

[21] The Record of Appeal shows that James, J, far from being unjust to her, in fact, did all he properly could to accommodate Ms Bennett by:

[18] Ibid.

a. allowing her to make a late (2 days before trial) application to adduce expert evidence[19];

b. Finding Dr. Cervantes to be independent and overruling the opposition's objection that he was not (on account of his connection with Ms Bennett)[20];

c. granting that application and, by so doing, indicating his wish to be assisted by expert evidence should he have to assess the damages arising from the pleaded case[21];

d. Vacating the trial dates to allow all the expert reports to be submitted to the court[22]; and

e. Indicating that, in spite of Dr. Cervantes' report not being compliant with the certification and document disclosure requirements in the CPR, he would allow him to attend to give oral evidence during the course of which those deficiencies could be addressed in examination-in-chief and cross-examination[23].

[22] It was Dr. Cervantes who did not fulfil a condition of his Terms of Reference to make himself available for court hearings, and it was Ms. Bennett who elected to forego reliance on Dr. Cervantes' written report and oral testimony. Neither of those factors can be attributed to the trial judge.

[23] I do not, therefore, agree with the submission of counsel for Ms. Bennett that the failure of the Judge to consider the expert report of Dr. Cervantes caused her an injustice. It follows that ground of appeal (iv) fails.

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[19] Paragraph 1 of his written ruling made on 12 April 2021 on the application for expert evidence
[20] Ibid paragraph 15
[21] Ibid. Paragraph 22
[22] Ibid. Paragraph 21
[23] Paragraph 24-26 of the judgment.

[24] Deprived, as he was, of the assistance of expert evidence, the Judge was left to make what he could of the evidence adduced before him and, having found Messrs. Cal and Williams liable, to determine the evidence of damage he could accept[24]. This is the subject of the other grounds of appeal which (as read) take issue with the Judge below:

a. failing to find that the Appellant was entitled to special damages in the sum of BZ$36,533.00 plus interest;

b. awarding general damages to the Appellant only in the sum of BZ$25,000.00 plus interest;

c. failing to provide reasons for the quantum of special and general damages awarded and in particular in failing to consider the damages which should be awarded to the Appellant under the specific heads of general damages;

d. failing to award the Appellant a reasonable and/or appropriate sum for the special and general damages suffered by the Appellant, plus interest;

e. finding correctly that medical evidence is not absolutely necessary to prove damages yet in proceeding to minimize the Appellant's damages notwithstanding that there was sufficient evidence to justify the grant of a larger award of damages.

[25] There is a fair bit of overlap in those grounds which I compendiously address below taking that into account.

[26] In her Statement of Claim, Ms. Bennett sought Special Damages in the sum of $58,827.00 broken down as follows:

[24] Paragraph 35 of the Judgment.

a.	Medical Expenses	$36,454.00
b.	Transportation and Boarding Costs	$22,080.00
c.	Loss of Income (3 months @ $3,431.00 per month due to requiring medical attention abroad)	$10,293.00
	Sub-total	**$68,827.00**
d.	Less $10,000.00 received o.b.o. the Defendants	$10,000.00
	TOTAL	**$58,827.00**

[27] With regard to that total sum, it was accepted by the Appellant in her written submissions to us that the amount of $33,465.00 was paid by an insurer of an Ancillary Defendant towards her medical expenses leaving, for consideration by James, J., whether he would allow recovery of the other items claimed (i.e. the $22,080.00 and the $10,293.00). James, J set out clearly in his judgment how he arrived at the sum of $2,869.00 for special damages. He said the following in relation to Ms. Bennett's claim for Special Damages[25]:

> *"Since the commencement of the Claim, the Claimant failed to amend her pleadings and as such was barred from claiming any future medical expense or loss. Another aspect of the Claimant's case that was unfortunate.*
> *…*
>
> *This is where medical evidence was important. Medical evidence is still needed to base some special damages. The medical report will also consider matters such as the medical treatment, rehabilitation, or care that the Claimant may require. For example, how can this Court determine whether the time taken off work by the Claimant in this case is reasonable in view of the injury she sustained. Other matters the Claimant has claimed including foreign trips for medical attention, ability to go back to work, restrictions on work will all be covered by medical evidence. These matters are serious and particularly important especially here where the Claimant has claimed she has not made a full recovery from the injury and may have some future disability.*

[25] At paragraphs 51-56 of his judgment

There is no evidence before the Court that there was any medical reason for the Claimant to have sought treatment abroad and needed to miss work for treatment abroad. There is no referral by any doctor in Belize to seek medical attention in the USA or from any medical person that pain management could not be done in Belize for this to be reasonable. Further, while nursing care by relatives is a reasonable expense, the Claimant was obtaining same in Belize which was not requested for and no evidence why she need to go away to her brother for this. I therefore would not allow these two heads of special damages.

In relation to the medical expenses, the Claimant exhibited a list of expenses totalling $36,454. The Claimant admitted in her witness statement… that she has received a total of $33,465 being $11,075 towards medical expenses and $22,390 to Belize Health Partners for medical expenses from the Ancillary Defendant. The Claimant does not say what in particular the $11,075 covers since the bill for the hospital was less than that. There is a difference of $2,989. Of that difference I would not allow the four invoices … amounting $120 for Oltsil Day Spa. The Claimant said these invoices were for a pedicure. This was not related to her injury and so not allowed for special damage.

The receipts produced save for the day spa were for medication and doctor visits. These were close in time to the accident and I find on a balance of probability she is entitled to them. They were around the time of the accident. I will award the sum of $2,869 in special damages."

[28] On the basis of the Special Damages (called "Consequential Loss" by Ms Bennett in her Statement of Claim) pleaded, and the evidence before the court, James, J allowed the $36,454.00 claimed by her, less the $120.00 for pedicure and the amount she had already received from the Defendants/Ancillary Defendants on account of those expenses. The mathematical calculation is as follows: $36,454.00 - $33,465.00 already received = $2,989.00 - $120.00 for the cost of claimed pedicure = $2,869.00. He did not allow the other heads of damage claimed (which expenses were claimed as a consequence of being overseas for treatment) because there was no evidence before the court that treatment overseas was required. I see no error in the sum awarded by James, J for special damages or in how he arrived at it. Ms Bennett was awarded the amount of her

entire claimed costs for Medical Expenses (Surgery, Medical Reports, etc.) of $36,454.00 (less the $120.00 for the pedicure only). In other words, the special damages awarded to her by James, J. was $36,334.00, the lion's share of which she received in advance of judgment. The $2,869.00 was the balance of that sum due Ms. Bennett as of the date of judgment, and it was awarded with interest of 6% per annum from the date of the accident to the date of judgment[26].

[29] As has been demonstrated, and contrary to the grounds of appeal advanced, the trial judge did not err in concluding that Ms. Bennett was entitled to special damages in the amount of BZ $36,334.00 with interest. He awarded her the maximum he could (given the pleadings and the evidence) and he gave his reasons for doing so. The grounds of appeal relating to special damages are not made out.

[30] The trial judge also gave his reasons for awarding Ms. Bennett general damages in the sum of BZ $25,000.00 with interest at 6% from the date of the accident to the date of judgment.[27] These reasons included:

a. Ms. Bennett's election not to rely on any expert medical opinion evidence[28].

b. The effect of the absence of such evidence on the court's ability to assess damages as it had no evidence of a diagnosis, prognosis and any future complication that may have beset Ms. Bennett[29].

[26] Paragraph 71 of the Judgment.
[27] Ibid.
[28] Paragraph 26 of the Judgment.
[29] Paragraphs 22 & 23 of the Judgment

c. The evidence of Ms. Bennett's injuries consisting solely of her own evidence and the observation of her condition contained in clinical records tendered in evidence *via* her witness statement[30].

d. The court's inability to rely on the medical records attached to Ms Bennett's witness statement in the absence of expert reports as required by Part 32 (i.e. the failure of Ms. Bennett to comply with the procedures essential to fairness as set out in the CPR)[31].

e. The absence of a pleading claiming the cost of nursing care[32] or future medical expenses.[33]

f. The absence of any evidence that Ms Bennett lost her job or was unable to work.[34]

g. There was no evidence before the court that there was any medical reason for Ms. Bennett to have sought treatment abroad or that she needed to miss work for treatment abroad.[35]

h. There was no referral by any doctor in Belize to seek medical attention in the USA or from any medical person that pain management could not be done in Belize.[36]

[31] It was submitted before us on behalf of Ms. Bennett that there was accepted evidence of 9 of the 15 injuries pleaded, namely:

a. Diffuse Myofacial Pain Syndrome (pleaded item xii);

[30] Paragraph 23 of the Judgment.
[31] See the extract of the Judgment of James, J quoted in paragraph 9 of this judgment.
[32] Paragraph 54 of the Judgment.
[33] Paragraph 51 of the Judgment.
[34] Paragraph 46 of the Judgment.
[35] Paragraph 54 of the Judgment.
[36] Paragraph 54 of the Judgment.

b. Muscle Imbalance Syndrome (pleaded item xiii);

c. Rotoscoliosis of 7L/LS (pleaded item xiv);

d. Accentuated Lumbar Lerdais (pleaded item xv);

e. Sequelae with Diastasis of Rectal Abdominal Muscles and Deformity in Fat and Skin (pleaded item x);

f. Deformity on the left renal region as a result of fat necrosis with fluid collection of 8cc (pleaded item xi);

g. Antalgic gait (pleaded item vii);

h. Pain Restricting the Claimant's full lumbar spine (pleaded item viii); and

i. Pain restricting the Claimant's Left Hip Flexion and Posterior Pelvic Motions (pleaded item ix).

The material in the Record of Appeal does not support that submission. It was certainly not the view of the Judge that the evidence was accepted. That is evident from extracts from his reasons already quoted above. The additional submission made to us on Ms. Bennett's behalf that, as she is a registered nurse, her testimony is clear evidence of the nature and extent of her injuries, ignores the fundamental characteristic of expert evidence being its independence. It cannot be said that Ms. Bennett's evidence of her own injuries qualified as independent evidence. In this trial, Ms. Bennett was not an expert witness. She was a witness of fact only. Furthermore, not only did the Defendants make it clear from the outset that they wished to cross-examine the expert witnesses proposed by Ms. Bennett (and permitted to give expert evidence on her behalf by the Judge), but it was an agreed (by the parties) Term of Reference to the experts that they comply with the procedural requirements and make themselves available to attend any court hearing. They did neither.

[32] No matter how serious a case of injury appears on the pleadings, it must still be proved by the Claimant. A court can only award damages based on proven facts (of which opinion evidence is one). As the Judge euphemistically put it, Ms.

Bennett's choice not to rely on expert medical evidence, and her failure to amend her pleadings to claim future medical expenses or loss, were unfortunate aspects of her presented case.[37]

[33] The fact that (as was accepted by Ms. Bennett) the Judge correctly found that medical evidence is not absolutely necessary to prove damages, does not mean that, in circumstances such as these (where the 15 specifically pleaded injuries are as detailed in paragraph 8 above), the court can proceed to assess damages without medical evidence establishing the injury sustained, its treatment and consequences. As James, J. said:

> *"I am in agreement with the authorities from Canada that not every injury requires expert medical evidence. That is not to say that expert medical evidence is not required or without it the Claimant's damages will not be limited, it means I have to evaluate the evidence and determine what evidence of damage I can accept."*

[34] The High Court is a court of pleading. Both the Claimant and the Defendant are entitled to fairness. Pleading ensures knowledge of the specifics of the case to be established and met in advance of the trial. In the civil arena, courts now operate in a milieu of *"cards on the table"* litigation. The days of trial by ambush are over. The procedural rules applicable to discovery and the admission of expert evidence ensure fairness to both sides. An agreement for expert witnesses to make themselves available at trial is not to be ignored by a litigant. It cannot be that in the absence of necessary pleadings or evidence, the Judge is criticized for making an award commensurate with the extent of his ability to do so. The Record in this case shows the court went to great lengths to give the Claimant an opportunity to amend her pleadings and to adduce expert medical evidence in support of her claim. She chose to do neither.

[37]Paragraphs 26, 28 & 51 of the Judgment.

[35] In assessing Ms. Bennett's general damages (to the extent he could without the assistance of the medical expert evidence he indicated he required when he appointed experts to give evidence at the trial), the Judge's assessment was confined to the injurious consequences to which any person, not medically trained, could testify. In this case, that did not extend beyond Ms. Bennett's pain and suffering and some loss of amenities.

[36] The Judge's award of BZ $25,000.00 as general damages (with interest on that amount at 6% per annum from the date of the accident to the date of judgment) reflects that. Far from being against the weight of the evidence and the law (as Ms. Bennett asserts in her grounds of appeal) this finding was in keeping with the evidence before the court, and with the law. James, J. stated expressly that, *"The Claimant may have been awarded more but there was not sufficient expert medical opinion to assist the court."*

[37] The cases Ms. Bennett's counsel referred to James, J, as being relevant to his assessment of the quantum of damages, were cases in which expert medical evidence was adduced to establish the injuries claimed, their treatment and residual impairment (if any). In this case, James, J had on the material before him; to evaluate the evidence and determine the evidence of damage he could accept without the assistance of expert medical evidence. He did so, making it clear that the award may have been more had the court received sufficient expert medical opinion evidence to assist it in assessing the damages.

[38] In assessing the general damages to which Ms. Bennett was entitled, the judge was expressly mindful of, and guided by, the general principles laid down by the Court of Appeal of Trinidad & Tobago in the case of ***Cornilliac v St Louis***[38]***.*** I see no wrong principle of law applied by James, J in his assessment of the general damages.

[38] (1965) 7 WIR 491. See paragraph 21 of the Judgment.

[39] In the peculiar circumstances of this case with its dearth of medical opinion evidence, it is not my view that the amount awarded by James, J for general damages was so inordinately low as to be a wholly erroneous estimate of the damage sustained. He, in fact, made his assessment within the constraints of the limited space provided by the Appellant for him to do so. It is clear from the reasons given in his judgment that James, J's award of general damages compensated Ms. Bennett primarily for the plain and obvious (to a layman) consequences to her of the accident. That is to say, her pain and suffering, her fatigue, bouts of constipation and incontinence, reduced flexibility, strength and stamina, resulting from the accident.[39] There being no accepted evidence before the court of the specific and detailed medical injuries pleaded, or of the treatment required for them locally or abroad, or of any consequential permanent partial disability or impairment, James, J could not have done more. The award he made is not nominal. It reflects the compensation he felt able to award to Ms. Bennett on the limited material she gave him to work with. It is not now open to her to say he should have considered medical opinion evidence she chose to forego reliance upon, or that he should award her damages under heads that she did not plead.

[40] For those reasons, I find none of the remaining grounds of appeal are made out. As a consequence, this appeal is dismissed.

[41] In the absence of receipt of written submissions on the costs of the appeal from the parties within 14 days of the date of promulgation of this judgment, the costs of the appeal are awarded to the 1st and 2nd Respondents to be assessed if not agreed.

Sandra Minott-Phillips K.C.
Justice of Appeal

[39] Paragraphs 37-45 of the Judgment.

[42] **Hafiz-Bertram, P.:** I have read the judgment of my learned sister Minott-Phillips JA and agree with the order made to dismiss the appeal with costs and the reasons for doing so. I have also read the judgment of my learned sister, Woodstock-Riley JA. I am unable to agree with her that the damages awarded by the trial judge are inordinately low.

_____
Minnet Hafiz-Bertram
President

MINORITY JUDGMENT

Introduction

[43] **Woodstock-Riley J.A.:** The Grounds of Appeal in this matter are:

1. The Learned Trial Judge erred in law and misdirected himself in failing to find that the Appellant was entitled to special damages in the sum of at least BZD $36,533.00 plus interest at the statutory rate of 6% from the 25th March 2014 to the date of judgment, as such a finding is against the weight of the evidence and the law.

2. The Learned Trial Judge erred in law and misdirected himself in awarding general damages to the Appellant only in the sum of BZ $25,000.00 plus interest at the statutory rate of 6% from the 25th March 2014 to the date of judgment, as such a finding is against the weight of the evidence and the law.

3. The Learned Trial Judge erred in law and misdirected himself in failing to provide reasons for the quantum of the special and general damages awarded and in particular in failing to consider

the damages which should be awarded to the Appellant under the specific heads of general damages.

4. The Learned Trial Judge erred in law and misdirected himself in failing to consider the expert report or portions of the expert report of Dr. Andre Cervantes in determining the award of general damages to be made in the Appellant's favour.

5. The Learned Trial Judge erred in law and misdirected himself in failing to award to the Appellant a reasonable and/or appropriate sum for the special and general damages suffered by the Appellant, plus interest at the statutory rate of 6% from the 25th March 2014 to the date of payment of the damages in full.

6. The Learned Trial Judge erred in law and misdirected himself in finding correctly that medical evidence is not absolutely necessary to prove damages yet in proceeding to minimize the Appellant's damages notwithstanding that there was sufficient evidence to justify the grant of a larger award of general damages.

7. The findings of the Learned Trial Judge were wrong in law and against the weight of the evidence.

[44] I have had the opportunity to read the draft judgment of Minott-Phillips JA. I am in agreement with the determination as indicated in paragraphs 26 – 29 that the Trial Judge did not err in his conclusion on special damages and that the Grounds of Appeal relating to special damages are not made out. The Trial Judge in paragraphs 49 – 56 of his judgment very clearly set out his reasoning on the assessment of special damages.

[45] With regard to general damages the determination of the Trial Judge at paragraph 48 of his judgment was brief. It states:

> "*The Court awards the sum of BZD$25,000.00 as general damages with interest at the rate of 6% from the date of the accident to the date of the judgment herein. The Claimant may have been awarded more but there was not sufficient expert medical opinion to assist the Court*."

[46] As noted in several authorities including the Judicial Committee of the Privy Council in ***Calix v Attorney General of Trinidad and Tobago*** that "*it is well settled that before an Appellate court will interfere with an award of damages it will be required to be satisfied that the Trial Judge erred in principle or made an award so inordinately low or so unwarrantedly high that it cannot be permitted to stand*." I am of the opinion that the Trial Judge did err in principle and made an award so inordinately low and without consideration of comparable awards in his assessment of the pain and suffering aspect of general damages that should be awarded to the Claimant.

[47] The Trial Judge's indication is that general damages would be more if there was expert medical opinion to assist the Court. Conversely, therefore it is less because of the lack of medical expert opinion.

[48] The Appellant in her Statement of Claim claimed 'general damages'. General damages are those losses which are not capable of precise quantification. There are many areas that can be considered under general damages. Pain, suffering, loss of amenities, loss of congenial employment, loss of Do-it-Yourself ability, unpaid domestic assistance, loss of earning capacity, future medical care for example.

[49] I would agree there are aspects of the claim for general damages that could not be maintained without medical evidence or that would be affected by its absence. For example, as it relates to the ability to work, loss of future earnings, long long-term prognosis, which would require expert medical evidence to support any contention a Claimant may make under those heads.

[50] However, pain and suffering which are in fact two separate considerations under general damages are the Claimant's pain and suffering**.** The Claimant can give that evidence of her pain, of her suffering and be believed or not. No reflection is given that the Trial Judge did not believe the Claimant experienced pain and suffering.

[51] In fact, the Trial Judge summarises at paragraphs 37 – 44 of his judgment what the Claimant testified to on this aspect and makes no negative finding of her credibility.

Paragraph 39 – "*The Claimant has a large abdominal scar about six inches long in center of her abdomen from the surgeries*."

Paragraph 40 – "*The Claimant who I accept was an active person before the accident also complains reduced flexibility, strength and stamina*."

The Trial Judge makes the definitive statement at paragraph 42 – "*The Claimant has chronic pain that she has experienced for the past 7 years from the road collision and onwards*."

Paragraph 43 - "*The Claimant clearly suffered pain from and still complains of suffering from pain ranging from excruciating pain to moderate pain. The Claimant, had two surgeries and was admitted to the ICU*."

Paragraph 44 - Recounts the Claimant's time in the hospital totalling 5 weeks and her two laparotomy surgeries.

[52] While this was a summary of the Claimant's evidence, the Record of Appeal discloses her comprehensive Witness Statement detailing over 73 paragraphs, her pain and her suffering. The Respondent derisively refers to this as a "*novel with visionary language to describe (her) pain and suffering*." However, this was the Claimant's evidence of her pain and suffering, unchallenged or unshaken in cross-examination. This is evidence to be considered in an assessment of an award.

[53] The evidence of the Claimant's pain and suffering consists not only as set out in her statements, but also supported by her witnesses who gave evidence of her "*screaming with pain*", her walk, her severe scar, photographs of her in the neck brace, pelvic brace over an extended period, photographs of her undressed wounds, bruises and injuries.

[54] While the Trial Judge notes that he has "*to evaluate the evidence and determine what evidence of damages I can accept*", he made no evaluation of the evidence of the Claimant's five witnesses who provided extensive evidence of her pain and suffering.

a) The Claimant's daughter, McKenna Codd - extensive evidence of the Claimant's years of pain and suffering, including her witnessing her groaning and crying.

b) The Claimant's son, Marcus August – extensive evidence of the Claimant's years of pain and suffering, including witnessing her screaming in pain, how her life had changed dramatically with the physical limitations, the need for intravenous morphine, and presented photographs he took of her injuries.

c) The Claimant's brother, Lion Bennett – evidence of occasions waking up in the night and seeing her awake groaning in pain and crying.

d) Matthew Reggie Martinez – a registered nurse, former co-worker and nursing colleague, evidence of the Claimant crying during some of the pain episodes, panic attacks, evidence of his first-hand observation of the Claimant's situation over an extended period.

e) Evidence also from Nafeesa Lemoth, also a registered nurse.

None of this evidence was challenged or discredited. It is substantial evidence of the Claimant's pain and suffering over a seven-year period. It indicates the weight of the evidence presented.

[55] None of this evidence of the Claimant's pain and suffering experienced for at least the past seven years, of her scar, requires a reduction because of lack of a doctor giving evidence. The Claimant's scar is her scar and medical evidence is not needed to determine how it looks or could explain how she feels about it, an aspect of suffering.

[56] As noted, general damages encompass several different areas. The award of BZD $25,000.00 without reference to what it is related to, being only stated as "*general damages"* and without reference to the basis for the determination indicates a mere nominal award.

[57] Both parties addressed on the basis that the award was a nominal award. The Respondent submitted:

> "*[21] The Learned Trial Judge's award in general damages to the Appellant in the sum of $25,000.00 plus interest at the statutory rate of 6% from the 25th March 2014 to the date of judgment was supported by the evidence and proper application of the law. Therefore, this award is fitting the Learned Judge's reasoning that medical evidence is not absolutely necessary to prove damages however, the Appellant was only entitled to nominal damages as justified by the limited evidence to confirm pain and suffering NOT her injuries and/or any resulting disabilities and loss of amenities.*
>
> *[22] It is submitted, that despite the Appellant outlining from her personal account her hospitalization, her pain and loss there was no record confirming what her injuries were and the extent of those injuries (nature and gravity) to justify a larger calculation for an award of pain and suffering, resulting disabilities, loss of amenities and the extent to which consequentially, the appellant's pecuniary*

prospects had been materially affected. In respect of these, we submit that the Appellant's award had to be nominal in the circumstances as she has failed to prove most if not all of the consideration for a calculable award."

[58] As acknowledged by the Trial Judge himself, an award can be made in the absence of medical evidence – paragraphs 28 – 35 of his judgment. *'I am in agreement with the authorities from Canada that not every injury requires expert medical evidence'* but goes on to state '*this is not to say that expert medical evidence is not required or without it, the Claimant's damages will not be limited'.* He cites ***Jalava v Webster and Planet Café Inc*** that *'it was open to the Court to award a nominal sum'.*

[59] An assessment of what an award should be for the Claimant's pain and suffering should have been made and not a nominal figure set out without any rationale for that figure.

[60] The determination that a considered award for pain and suffering for a scar on her abdomen, could not be made because of a lack of medical evidence and only a nominal, limited sum is a wrong application of the law.

[61] Comparison should be made with cases ideally in the same jurisdiction or in a neighbouring locality where similar social and economic conditions exist. The Court must strive for consistency by using comparable cases while cognisant that damages must have reference to the value of money at the date of trial. As the then Hon. Chief Justice Abdulai Conteh noted in ***Sanchez et al v Gianchandani*** **BZ No 385 of 1999** *"I can only adapt with approbation, the dictum of the learned Chief Justice of Trinidad and Tobago in the case of* ***Aziz Ahamad Ltd v Raghuntan Raghubar (1967) 12 WIR 352*** *where he stated "in jurisdictions such as ours in which assessments of general damages are made by judges without the aid of juries it has become accepted principle that the courts should strive as high a measure of uniformity of award as is reasonably practicable….. we ought consciously to set about establishing and following trends of our own. But until we do we should pay*

heed to and take such guidance as we can from awards elsewhere, making such adjustments as may be appropriate having regard to our own prevailing condition."

[62] While the Trial Judge set out the cases the Claimant submitted, no comment, analysis or reference to those cases was made.

[63] A review of those cases indicates:

(a) *Bainton v The AG and Commissioner of Police*, BZ No 261 of 2011

- The Claimant's injury was to the leg and knee from two gunshot wounds to her left leg, one to the right. Two pellets were removed, the other still lodged in the right leg. The Judge notes a lump sum would be awarded, but for convenience, consider the relevant facts under each head.

- 53 years old, married, one daughter. $6,000.00 was awarded for loss of earning capacity without evidence other than from the Claimant. The Trial Judge referenced "*the Board entertains some reservations about the usefulness of resort to awards of damages in cases decided a number of years ago*" and the importance of comparable awards in other jurisdictions. Ultimately awarding $30,000.00 including loss of earning capacity.

It is to be noted the pain and suffering indicated would have been less than in the instant case in addition to it being an assessment made a number of years ago.

(b) *Weibe et al v Jones*, BZ No. 698 of 2008

- Items or heads have to be considered in assessing general damages. In this case "*neither their doctor nor any of the other doctors who attended the Claimants were called to give evidence to explain the meaning of their diagnoses*."

- The Trial Judge noted the Claimants must have felt severe pain due to the accident but they gave no oral evidence of the extent of pain they suffered. He noted the medical reports of Dr. Sosa speak of "*chronic neck and upper extremity pain*." The Trial Judge referenced cases from Kemp and Kemp, from Jamaica, and noted *'I bear in mind the above awards were made more than 20 years ago. I also consider the facts and circumstances of the case and that I must award general damages that are fair and reasonable. Doing the best I can on the evidence without the benefit of hearing the doctors and bearing in mind the injuries suffered according to the medical reports and seeing the claimants in court I arrive at a figure for general damages.'*

- Claimant No. 1 was awarded $30,000.00 for pain and suffering and loss of amenities. Claimant No. 2 was awarded $35,000.00.

Both involved less evidence of pain and suffering and also were awards from many years ago.

(c) *Idelfonso v Wagner and Villafranco*, 131 of 2014

- Arm injury, thigh injury. 19-year-old construction worker. Closed right humeral fracture and an open fracture to his right femur. Surgery to fix both and 6 months to recuperate. Re-admitted in 3 months – bone infection; hospitalised for one month. Limb length discrepancy. Pelvic tilt maintains a limp, two surgeries, 20% permanent residual disability.

- The Trial Judge Young J noted, "*that pain is clearly not debilitating as he was present in court and I was able to*

see and appreciate his gait and movement firsthand." …. "*able to walk up the court steps.*"

- The Judge highlighted the importance of uniformity and quoted Conteh CJ in ***Sanchez*** and added *'this approach also known as the comparable case approach has received the approval of the House of Lords and the Privy Council where it has been said that fairness between one claimant and another requires some degree of uniformity* ***H West and Sons Ltd v Shepherd [1964] A.C. 326*** **.'** She reviewed various cases and awards and ultimately determined $50,000.00 for pain, suffering and loss of amenities as a separate award from future loss of earnings.

(d) ***Ricardo Jacobo and Louis Jacobo v Murphey*****, 155 of 2018**

- Decision 12-07-2018.

- Medical report – multiple facial fractures, laceration of the spleen which was removed, healed scar. Loss would lead to susceptibility to infections. Unable to work for a year. Ricardo – closed head injury, lacerations of scalp, closed fracture of a number of ribs, abdominal injury with laceration of liver, open fracture of left femur and open fracture of left tibia and fibula, underwent surgery. Unlikely would regain normal speech, forehead would have a permanent scar. Unable to walk for one year. The Trial Judge reviewed awards in several Belizean cases as well as the **Judicial College Guidelines for Assessment of damages in personal injury cases.** (At that time the 13th edition). The awards were $130,000.00 each. The

damages being assessed were more severe than the instant case.

[64] In assessing damages, the Courts for many years now have also considered the **Judicial College Guidelines:**

> *"**Forward to the Seventeenth Edition of the Judicial College's Guidelines for the Assessment of General Damages in Personal Injury Cases***
>
> *It is now over 30 years since the publication of the first edition of these guidelines for the assessment of general damages in personal injury cases. Thirty-one years on, the objective of the Guidelines remains the same. Their purpose is to reflect the awards of general damages currently being made by judges and to do so in an accessible form designed to make the work of those practising in the field and judges, easier.*
>
> In relation to scars, "*Scarring to other parts of the Body*". The Guidelines provide:
>
> "*A large proportion of awards for a number of noticeable lacerations or a single disfiguring scar, of leg(s) or arm(s) or hand(s) or back or chest fall in the bracket of **£9,560 to £27,740**.*
>
> *In cases where an exploratory laparotomy has been performed but no significant internal injury has been found, the award reflects the operation and the inevitable scar. **In the Region of £10,550**."*

The present conversion rate to sterling is BZ $2.56.

[65] In considering cases from other jurisdictions in the Caribbean, the following is instructive. ***Mellissa Bissette v Queen Elizabeth Hospital et al***, **Barbados 1694 of 2006**, a 2020 decision where the Claimant was awarded $75,000.00 for scarring in a "private area", i.e. US$37,500.00, the same in BZD. Counsel for the defence had argued that the scarring cannot be considered a major or significant cosmetic disability because it is not to her face and the scars can only be seen when the Claimant is in an undressed state or dresses in a swimsuit or during sexual

intercourse. The Judge noted *"[102] - It is true that the Claimant's scars are not normally visible to other individuals. But, situated as they are on her abdomen, she will have to view them every day for the remainder of her life. The unsightly scarring will remain a constant embarrassing reminder of her harrowing experience*."

[66] In ***Lopez v Attorney General of Belize*** **No. 278 of 2019,** a 2021 decision, while the injuries and quantum are not on point, the approach to assessment of damages is relevant. The Trial Judge noted the same Canadian authorities and conclusion as in this case that not every injury requires medical evidence but it is important to review the evidence. The Judge recounted the Claimant's evidence of his pain and suffering, went on to note *'I consider the following authorities'* and reviewed five cases from Belize.

[67] I am cognisant of the authority that a Court of Appeal would not interfere with the assessment of damages even if it may have a different opinion. I find it justifiable in this matter.

(a) The Trial Judge erred in principle determining that he could only award nominal damages in the absence of expert medical evidence when there was evidence of the Claimant's pain and suffering and evidence of her scar. In not distinguishing between general damages that would be affected by the absence of medical opinion and the plethora of evidence that could be accepted.

(b) The failure of the Trial Judge to reference and review comparable decisions was an erroneous application of principles of law in the assessment of damages. The failure to do so further supports the finding that he was making a nominal award.

(c) If not making a nominal award considering the evidence presented and comparable cases the assessment of BZD $25,000.00 for the Claimant's pain and suffering and scar, was inordinately low.

[68] I must also mention the issue of nursing care. It is well accepted that damages to compensate for the same are recoverable even when provided gratuitously. Unfortunately, as with many aspects of this case, this was not presented.

[69] Assessment of general damages is a difficult exercise. While comparable cases should be reviewed, they are not always easily available. However, the difficulty is not a bar to an assessment nor as the Judge rightly pointed out is the absence of expert evidence. While it is accepted that its absence in some aspects of general damages justifies no award the awarding of a nominal and/or inordinately low award, not in keeping with comparable decisions indicates an assessment of BZD $25,000.00 should not be allowed to stand. I am of the opinion that the grounds of appeal, as it relates to the award of BZD $25,000.00 for general damages, should succeed. I have considered the authorities as referenced above and determined that an award of BZD $60,000.00 would be fair and reasonable on the Claimant's evidence of scarring, pain and suffering.

_____

Marguerite Woodstock Riley K.C.
Justice of Appeal