

she was a passenger in a motor vehicle. She was sitting in the front seat. She observed an oncoming motor vehicle which she describes as a pickup. That vehicle seemed to be out of control and swerved towards her vehicle. The vehicle in which she was travelling went onto the banking on the left side of the road but the pickup 'slammed' into it.

- [4] On impact the Claimant's head was flung into the dashboard and she went back into the seat. She received several cuts around her nose and her face was bloody. She, with the assistance of others, exited the vehicle and then remembers nothing until she awoke at the hospital.
- [5] The Claimant details her time in hospital, her treatments and her pain and suffering. I accept that she remained in the emergency section of the hospital for 2 days she was thereafter admitted to the ward for 2 weeks. In that period she was unable to get up and walk. She had to wear a hard collar around her neck and to continue to do so even after her discharge from hospital. She was unable to use her right arm and had to be tidied with the assistance of others. She received injections for pain once per day.
- [6] Upon discharge from hospital she was required to attend physiotherapy. At home she had to employ someone to take care of her and do house chores. The pain was so intense that she returned to the hospital's outpatient clinic prior to her scheduled appointment. The doctor advised her to continue medication and use warm water to bathe her neck and hand.
- [7] She attended physiotherapy sessions which commenced on the 11th June 2008. Shock therapy was applied using a machine which "shocked" her nerves. In all she attended 18 sessions. She paid \$20,000 in all. Her appointment card (exhibit 9) was tendered in support.
- [8] An MRI examination was done and a second round of physiotherapy recommended. She stopped going to physiotherapy because she could not afford it and it was seeing no improvement.
- [9] The Claimant states that she used home remedies and about a year after the accident the severe pain began to go away. She still had pain and

stiffness in her neck, at least twice per week. It is sometimes so severe that she cannot turn her neck. Pain killers do not help but she on these occasions rubs her neck with ointment. She sometimes feels a “tingling” in her right hand. She is right handed and now cannot write for too long or comb her children’s hair as if she does the hand becomes numb and she has to rest it.

- [10] At the time of the accident the Claimant was a Sales Representative for Exclusive Beauty Supplies. Her job required standing for long periods and she was unable to work following the accident. She received 2 weeks pay from her employers. She then earned \$4,500 for per week. She returned to work on a trial basis one year after the accident but was unsuccessful. The pain to neck and back prevented her functioning adequately. She was therefore not rehired. She tried jerking chicken for a living but could not because of the pain from consistent bending. Her lost income she calculated at \$576,000.
- [11] The Claimant says that she paid \$3,000 per week for 9 months being \$108,000 to a lady for household help. She then had 3 children ages 3, 6, and 10 to care for. Her costs of travel to the clinic cost \$500 for each trip totaling \$9,500.00.
- [12] Exhibit 1 is a medical report of Doctor Don Gilbert dated the 21st October 2011 and Exhibit 2 a medical summary report form from the Cornwall Regional Hospital. The latter document states that the Claimant was involved in a motor vehicle collision on the 21st May 2008. On examination she was conscious, coherent and cooperative; she had mild tenderness of the spine at c, level. An x-ray of the spine revealed a fracture T1 process. A CT of the brain showed normal study but a CT of the spine showed undisplaced fracture transverse process T1. She was diagnosed with undisplaced fracture transverse process T1. Treatment involved a cervical collar, analgesics and physiotherapy. Her complaints were mild pain in neck and decreased range of movement of neck.
- [13] Dr. Don Gilbert in his report stated that he examined the Claimant on the 19th October 2011. He says that the Claimant reported that in 2007 she had had a stroke which caused left sided weakness. She is hypertensive

and asthmatic. She has had multiple admissions to hospital for seizures. She was involved in a motor vehicle accident on the 21st May 2008. He recites a history more or less consistent with the Claimant's account.

- [14] The Doctor further reports that on the 19th October 2011 she had no pain but reported that tingling in her right hand took place two weeks earlier. Examination revealed mild discomfort of the neck over the 3rd cervical vertebra but no tenderness in trapezius muscle. There was full flexion and extension of the neck but decreased rotation to the right side. Reflexes and power were normal in all limbs. An MRI done on the 21st October 2008 by Dr. Carlene Gentles showed mild straightening of the normal cervical lordosis but it was otherwise normal. Plain radiographs of the cervical spine done on the 19th October 2011 showed narrowing of the C5/6 disc space with osteophytes present.
- [15] Dr. Gilbert concluded that the Claimant suffered a fracture of the right transverse process of the 1st thoracic vertebra and now has limitation in range of motion in the neck, intermittent symptoms of paresthesiae and easy fatigability in the right hand suggesting a "Thoracic Outlet Syndrome." He states that she is unlikely to regain the full range of motion in her neck. He suggested that she be seen by a neurologist for nerve conduction studies to confirm or refute the diagnosis of thoracic outlet syndrome which he described.
- [16] The doctor applied the *Guides to the Evaluation of Permanent Impairment published by the American Medical Association*. He assessed the Claimant's impairment at 2% of the whole person. He said that the neurologist would have to assess her impairment if thoracic outlet syndrome were confirmed. Dr. Don Gilbert be it noted is a Consultant Orthopaedic Surgeon.
- [17] In his submissions Counsel for the Claimant relied upon the authorities of ***Gordon v McKenzie Suit C.L. 1997 G025 unreported Judgment delivered on the 10th July, 1998 and Barnett v Brown Claim No. 2003 HCV 1358 Unreported Judgment delivered on the 3rd November 2006.*** He submitted for an award of \$1.75 million for Pain, Suffering and Loss of

Amenities. As regards Special Damages Counsel submitted for \$762,000 being:

[18] In *Gordon v McKenzie* (see above) the injured Claimant received a whiplash injury. She too had a weakness in her arm. Her whole person disability was 3%. The award for Pain, Suffering and Loss of Amenity in 1998 was \$400,000. When updated using the CPI for December 2014 of 224.1 this approximates to \$1,874,529.04. The other case cited before me was of limited assistance involving as it did injuries to the face and eye and a 0% permanent disability. Nor was there an assessment of disability in **Graham v. Nembhard C.L. 1998 G103** unreported decision of 29 September 2000. That Claimants injuries were similar but she also had some loss of memory. The award was \$600,000 which updates to \$2,398,073.80.

[19] Having considered these awards my decision is as follows:

General Damages

Pain Suffering and Loss of Amenities: \$1,800,000.00

Special Damages

Lost Earnings:	\$576,000
Cost of Medical Treatment	20,000
Cost of Transportation	9,500
Cost of Household help	\$108,000
Cost of Medical Reports (as pleaded)	<u>16,000</u> \$729,500

It will run at 3% on General Damages from the date of service of the Claim and Particulars of Claim and at 3% on Special Damages from the 21st May 2008 to the date of this judgment.

David Batts
Puisne Judge