[2014] JMSC Civ. 15

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2003 HCV 01644

BETWEEN	**CHERYL JOHNSON**	**CLAIMANT**
AND	**HERBERT TREASURE**	**1ST DEFENDANT**
AND	**WAYNE JOHNSON**	**2nd DEFENDANT**

CONSOLIDATED WITH

CLAIM NO. HCV 01471 OF 2006

BETWEEN	**ODAINE McINTYRE**	**CLAIMANT**
AND	**HERBERT TREASURE**	**1ST DEFENDANT**
AND	**WAYNE JOHNSON**	**2nd DEFENDANT**

CONSOLIDATED WITH

CLAIM NO. HCV 00856 OF 2004

BETWEEN	**EMILYN LOTHIAN** **(represented by Odain McIntyre as administrator ad litem)**	**CLAIMANT**
AND	**HERBERT TREASURE**	**1ST DEFENDANT**
AND	**WAYNE JOHNSON**	**2nd DEFENDANT**

Mr. Garth Taylor for the Claimants.

Ms. Andrea Walters-Isaacs for the 1st Defendant.

Negligence – Personal injuries - Question of fact – Causation - Claim for damages.

Heard: November 7, 2013; & February 7, 2014.

F. Williams, J

Background

[1] This matter arises from a motor vehicle accident which occurred on May 28, 2000. Involved in the accident were a Mitsubishi Lancer motor car registered 1853 DE, in which the claimants were passengers; and a Toyota Hiace motor bus registered 2709 DC driven by the 1st defendant. The 2nd defendant, who was the driver of the motor car, was joined to the proceedings; but, it appears, no further steps were taken against him after the entry of a default judgment on or about March 29, 2010 until fairly recently.

[2] The claimant Emilyn Johnson was (she is now deceased) the mother of the claimant Cheryl Johnson and of the 2nd defendant; and the grandmother of the claimant, Odaine McIntyre (he being the son of Ms. Johnson).

[3] Both vehicles were right-hand drive vehicles. In terms of the seating arrangements, Ms. Lothian was seated in the front left passenger seat; Ms. Johnson was seated immediately behind her; and Mr. McIntyre was seated in the right, rear passenger seat, behind the driver.

[4] In the motor bus driven by the 1st defendant, Mr. Treasure, were his son and several passengers who had just attended a funeral.

[5] The accident occurred about 12:00 noon along the Prospect Main Road in the parish of St. Thomas, when both vehicles, travelling in the same direction, were heading in the direction of Portland. The occupants of the motor car were on their way to visit family and the 1st defendant was transporting funeral attendees to the burial site. The destination of each vehicle was the parish of Portland.

[6] The witness as to fact for each side (Ms. Johnson and Mr. Treasure), each indicated in testimony that the motor car was travelling behind the motor bus, which in turn was travelling behind a trailer. It is what occurred as each vehicle tried to overtake the trailer that is the central issue in this case; the main issue being that of credibility.

The Evidence for the Claimant

[7] For the claimants, Ms. Johnson, (by way of video link from the Bronx, New York, in the United States of America), testified that, from her vantage point of the left rear seat of the motor car, she saw that the driver of the motor car had begun to overtake the bus when the way was clear. Whilst the car was engaged in this act of overtaking the bus, the bus itself swung out in an attempt to overtake the trailer, thus causing the collision. She was unable to say exactly what part of the bus came into collision with the car; but the impact was to the left side of the car.

[8] She is unable to say what the damage was to the bus. She is also unable to say exactly what the damage to the car was; however, she knows that the car was damaged extensively.

[9] The area of the road where the accident occurred is wide enough to accommodate two vehicles side by side.

[10] She insists that there was no pedal cyclist coming from the opposite direction as the 1st defendant equally insists that there was such a pedal cyclist.

[11] She indicates as well not knowing much about proceedings against her brother, the 2nd defendant, although she was referred to documents with her signature, the suggestion being that she must have been aware that he had been sued in this action and that a default judgment was entered against him.

The Evidence for the 1st Defendant

[12] The 1st defendant testified that on the day in question he was driving the bus along the Prospect Main Road. He was in a line of traffic caused by a slow-moving trailer, immediately behind which he was travelling. He encountered the trailer in the vicinity of Yallahs. He was unable to say for how long he had been travelling behind the trailer before the accident.

[13] In terms of measurements, he gives the width of the trailer head as some eight feet; the width of his bus as about six feet; and he says that the width of the road was some 18-20 feet and that the road could have accommodated three vehicles side by side, using the soft shoulder.

[14] His evidence is to the effect that he began to overtake the trailer when he saw that there were no oncoming vehicles and that it was safe to do so. As he was in the process of doing so and looked in his rear-view mirror (that is, his right, wing mirror), he observed the car driven by the 2nd defendant and carrying the claimants, attempting to overtake him at the same time. He also observed a pedal cyclist coming from the opposite direction, waving his hand, apparently in panic, seemingly anticipating being struck by the motor car which was travelling in his (the pedal cyclist's) path.

[15] He accelerated and did not stop doing so until he could see the trailer in his rear-view mirror. While overtaking the trailer, the car came into contact with his bus, with the left front wheel of the car becoming locked into the right rear door of his bus, and he had to struggle to keep his bus on course, the car pushing the back of his vehicle to the left. There was only minor damage to his bus, the damage being confined to the right rear door. The car, however, was extensively damaged, it colliding with a utility pole on the right side of the road after it had collided with his bus and, as a result, losing control.

The Submissions on Liability

For the Claimants

[16] It was submitted on behalf of the claimants, in summary, that:

i. The 1st defendant's evidence that three vehicles could pass at the same time is to be rejected as being implausible.
ii. His evidence that he saw a pedal cyclist; and that he saw the car in his wing mirror should also be rejected.
iii. His evidence that he started overtaking when the way was clear should be rejected.

For the 1st Defendant

[17] These submissions might be summarized thus:

i. The physical damage to the 1st defendant's vehicle is consistent with his account and inconsistent with the account given by Ms. Johnson.
ii. The claimant's witness (Ms. Johnson) was not credible.
iii. With a default judgment already having been entered against the 2nd defendant, the only concern of this court should be whether there is any contributory negligence on the part of the 1st defendant.
iv. There was a pedal cyclist and it was his presence that put the 2nd defendant in a dilemma, thus causing the accident.

Discussion

[18] It will be readily seen that central to a resolution of the issues in this case is that of credibility, with each side contending that the other side's account is not credible; but that its account is. The court has also been requested to have regard to the demeanour of the witnesses as a means to aid it in its assessment of where the truth in this case lies.

The Physical Evidence

[19] Such evidence as the court has in relation to the physical damage to the vehicles in this case is relatively sparse and not independently confirmed – such as, for example, by means of an assessor's report. From Ms. Johnson, the most that she was able to say about the motor car in which she was travelling was that it was "written off". She was unable to say, however, what the nature of the damage was to the bus driven by Mr.

Treasure, her evidence being that she did not see the damage to the bus at the time of the accident and that by the time she was discharged from the hospital, the bus had already been repaired.

[20] So far as Mr. Treasure is concerned, he spoke primarily of the damage to his bus. He testified that the right rear door of his vehicle was damaged and that this damage was caused by the left front wheel of the car locking into the door and leaving a mark or impression on it and that there was no more damage of any sort on his bus.

[21] In the court's view it is highly improbable (if not impossible), for the damage described by Mr. Treasure to have been caused in the way that he said it was. Unless that left front wheel protruded (and protruded significantly) away from the body of the motor car, it would have been impossible for the wheel alone to have made contact with the body of the bus without the fender or other part of the body of the car coming into contact with the bus as well. This observation is made from the court being familiar with both types of vehicles involved in the accident. With the particular type of motor car involved, the wheel would be shrouded by and completely enclosed by the fender; or at the very most be flush with it. This finding, of course, negatively affects the court's view of Mr. Treasure's credibility. (Additionally, it should be observed that the court is familiar with a right rear panel (and not a right rear door) on the Toyota Hiace).

[22] Further, the Toyota Hiace driven by Mr. Treasure, being a passenger bus carrying several passengers would, in the court's view, be the heavier, sturdier vehicle compared with the motor car and less likely to be the one to struggle to maintain a straight course consequent on a surprise collision. This is, in the court's finding, one reason why it was the motor car that lost control and ended up colliding with the utility pole and being so extensively damaged; and not the bus.

[23] The court has also considered the respective journeys upon which the two drivers were engaged and finds that it is not impossible for this to have affected the manner in which it can be inferred that they might have driven on the day in question. In respect of

the 2nd defendant, Wayne Johnson, it was a journey to visit relatives in an adjoining parish and so not likely to have been affected by the imperative of getting there by a particular time. In respect of Mr. Treasure, on the other hand, his evidence is that he was transporting mourners who had just left the funeral service and were on their way to a burial ground in Portland. His evidence also indicated that there were other vehicles conveying other persons going to the burial. Those vehicles, he believed, had gone ahead of his. Would Mr. Treasure not have been affected by the imperative of trying to prevent those vehicles from getting too far ahead of him and for him to have been left behind and to have arrived late for the burial? Might having been delayed behind a trailer for some time, when desirous of continuing on his journey, and finally seeing an opportunity to overtake, not have impelled him to do so without taking the necessary precautions? By itself, perhaps this consideration might not be conclusive; but when considered against the background of the other findings, these, together, would push the balance of probabilities against Mr. Treasure and in favour of the driver of the motor car.

[24] Accepting the evidence of Ms. Johnson, the court finds that there was no cyclist proceeding from the opposite direction and regards this as an invention by Mr. Treasure to support his contention that the car was attempting to overtake him as he was overtaking the trailer. What caused the collision, in the court's finding, was a sudden and unexpected manoeuvre on the part of Mr. Treasure, who swung out into the path of the car whilst it was already in the process of overtaking, thus causing it to lose control, veer to the right and collide with the utility pole. This occurred because Mr. Treasure failed to keep a proper lookout and failed to ensure that the way was clear before attempting to overtake.

Demeanour

[25] So far as the demeanour of the witnesses was concerned, the court found both witnesses to be somewhat evasive at times; but, in this regard, had a greater issue with the way in which Mr. Treasure gave his evidence. At times he was extremely evasive and seemed bent on providing information that he wanted to give rather than on

attempting to answer the questions that were being asked of him. The court was not impressed with the way in which he gave his evidence; and did not find him to be a witness of truth.

[26] Ms. Johnson's evasiveness was noticed especially when questions were asked about her brother and allegations made against him in the suit. However, even if she signed documents alleging negligence on his part, it is not impossible or unusual for documents to be signed by litigants without their being aware of their full import and purpose. This court has seen, for example, witness statements signed by simple, unsophisticated persons that were written in a manner, using complex words and phrases that the witnesses could barely understand or explain, when pointed questions were directed at them in cross-examination.

[27] At the end of the day, the court was more impressed with Ms. Johnson's demeanour; and preferred her testimony to that of Mr. Treasure.

Width of the Road

[28] In relation to the width of the road, the court finds (again accepting the evidence of Ms. Johnson), that the road was one that could have accommodated two vehicles side by side; and not three, as Mr. Treasure contended. Had the road been between 18 and 20 feet in breadth; and wide enough (including the soft shoulder) to have accommodated three vehicles; with the trailer head having been eight feet; the bus having been six feet and the car, say, four feet wide, there would have been adequate space for all the vehicles to have travelled side by side without there having been a collision.

[29] The court, therefore finds in favour of the claimants and against the 1st defendant on the issue of liability.

The Position of the 2nd Defendant

[30] It was argued on behalf of the 1st defendant that, with a default judgment having been entered against the 2nd defendant, all that the court was concerned with was an ascertainment of any contribution on the part of the 2nd defendant.

[31] The court, however, has a difficulty in accepting this argument. For one, a default judgment is, as the court understands it, an administrative or procedural step taken against a party pursuant to Part 12 of the Civil Procedure Rules (CPR). This step has been taken on behalf of the claimants in this case. It is a judgment for a sum of money to be determined by way of an assessment of damages. The judgment was entered some time ago (on March 29, 2010). The matter was only set down for an assessment of damage against the 2nd defendant at this trial by way of an order made on February 11, 2013. For all the court knows, the claimants may well take no further steps against the 2nd defendant. However, whether they do or not is a matter entirely for them. To the court's way of thinking, its concern at this trial is to determine liability as between the two sets of parties between whom issue has been joined, and to do so on the merits. It need not take (and has not taken), in doing so, account of a default judgment. Further, it need not accept thereby as a *fait accompli* that the 2nd defendant was negligent; and restrict its task merely to a consideration of whether the 1st defendant, in addition to the 2nd defendant, should be fixed with contributory negligence for the accident. The court finds no contribution on the party of the 2nd defendant and finds Mr. Treasure, the 1st defendant, fully to blame for the accident. In any event, in respect of these claimants, who were passengers in one of the vehicles, they would stand to recover, whichever driver was negligent or whatever the apportionment of any contribution that might have been found.

Any Significance of a Traffic Charge against the 2nd Defendant?

[32] From the 1st defendant, evidence was led that he was aware that the 2nd defendant was facing a traffic charge; and that he was not aware that he was found not guilty. That was the sum total of the evidence in this regard. That evidence is not sufficient to incline this court to take the view that the 2nd defendant must have been negligent. And, in any

event, a court such as this is not bound by any outcome of proceedings in a traffic case (see **Hollington v Hewthorn** [1943] KB 587).

[33] We may now address the issue of the quantum of damages to be awarded to each claimant.

[34] Before dealing with the individual claim of each claimant, however, the court notes, with some disappointment, that there are no current and up-to-date particulars of special damages in respect of each claimant. It was submitted on behalf of the 1st defendant that no award for special damages ought to be made in any of the claims, as it is trite law that special damages must be specifically pleaded and proved.

[35] The approach that was taken on behalf of the claimants, however, was, by way of the written submissions, to explain the reason for the application for the amendments not having been previously made. These reasons were stated to be that: (i) the claims were inherited from another attorney-at-law; and the requisite receipts were not available when needed; and (ii) the break-down for the cost of future medical expenses was not available until recently – one, in particular, not having become available until October 9, 2013.

[36] This submission on behalf of the 1st defendant (as to the need to specifically plead and prove special damages), is, of course, correct. If authority be needed to support this submission, then one such case is that of **Bonham-Carter v Hyde Park Hotel** (1964) 64 TLR 177.

[37] Although the approach of making the application by way of closing submissions is less than ideal, the court considers that the expenses have been borne out in the witness statements and amplification of the witnesses' evidence (in particular, that of Ms. Johnson); and, in fact, several exhibits (21 in all) were received into evidence by consent which go towards substantiating the claimants' claims for special damages. Therefore, although the requirement is for special damages to be both pleaded and

proven, in this case the claimants, though falling short on the aspect of pleading, have dealt sufficiently with the requirement of proving the items of special damage. So that, while this last-minute approach is not an approach that the court would expect to be repeated or imitated, in the particular circumstances of this case, the court in the exercise of its discretion will, this once, grant the very great indulgence of allowing the application.

Quantum of Damages

The Claimant, Cheryl Johnson

Special Damages

[38] In light of the evidence and what the court considers to be the reasonableness of the claim for this claimant, the court considers the following items of and total amount for special damages to have been properly proven:

(i)	Amount paid to Central Med Labs	$9,100
(ii)	Cost of crutches	$6,000
(iii)	Cost of medical report	$2,000
(iv)	Cost of medication	$5,000
(v)	Loss of income for 42 days @ $3,000 per day	$126,000
(vi)	Cost of transportation to visit son	$4,000
	Total	**$152,000**

[39] It will be seen that the only item adjusted is the claim for loss of earnings for 90 days; the claimant instead being awarded for 42 days or 6 weeks – in keeping with exhibit 11.

General Damages

[40] The medical evidence in relation to this claimant (exhibit 11), speaks to her sustaining these injuries: (a) incomplete fracture of the left fibula, in the region of the

ankle; (b) 2cm laceration to the right upper eyelid; and (c) abrasion of right shoulder with pain.

[41] On this claimant's behalf, the sum of $1.2 million was requested. This claim is based on the case of **Maureen Golding v Conroy Miller & Duane Parsons** – in **Recent Personal Injury Awards Made in the Supreme Court of Judicature of Jamaica**, by Mrs. Ursula Khan (Khan), volume 6, page 62. In that case, the claimant sustained an undisplaced fracture to the left fibula and had pain in the left leg.

[42] On the 1st defendant's behalf, it was submitted that an appropriate award would be somewhere in the region of between $750,000 and $800,000. In support of this submission, three cases were cited, including that of **Maureen Golding**, cited by counsel for the claimants. The other two cases are: (i) **James Cowan v New Era Homes** – reported at volume 6, page 72 of Khan, in which the claimant suffered fractures to both the tibia and fibula, experienced mild, mechanical lower-back pain and was left with a 5% permanent partial disability (PPD). In that case the award in today's money would be some $1.3 million. (ii) **Linden Garibaldi v Anthony Nicholson** – reported at page 82 of volume 4 of Khan. In that case, the claimant sustained a fracture to both the tibia and fibula of the left leg; as well as multiple abrasions over the left forearm; right hand and right knee. That award would be worth some $1 million today.

[43] Having reviewed these cases, it does appear that they are all somewhat worse than the instant case, as they all involve fractures to both tibia and fibula, whereas in the instant case the fracture was to the fibula alone. In the result, an award that seems to be fair in the all the circumstances is the sum of $900,000.

The Claimant, Odain McIntyre

Special Damages

[44] Although the injuries for this claimant will be set out in greater detail when his claim for general damages is being discussed, it is worth mentioning here that this claimant suffered serious injury to his mouth involving loss of three upper incisor teeth and one

milk tooth and fractures to two other teeth. Some deformity has resulted. A significant portion of his claim is for remedial surgery and medical and/or dental expenses. The claim is:

(i)	Cost of future bone-graft surgery	$1,145,400.00
(ii)	Cost of future implant surgery	$ 436,000.00
(iii)	Panoramic x-ray & consultation	$ 13,000.00
(iv)	Endodontic therapy- July, 2011	$ 136,000.00
(v)	Endodontic therapy- May, 2011	$ 136,000.00
(vi)	Cost of medical reports	$ 20,000.00
(vii)	Office visit – Dr. Johnson	$ 22,188.00
(viii)	Transportation-Morant Bay Clinic	$ 1,800.00
(ix)	Transportation to Dr. Johnson	$ 3,000.00
(x)	Cost of dentures	$ 200,000.00
(xi)	Cost of medication	$ 40,000.00
	Total	**$2,153,000.00**

[45] Counsel for the 1st defendant, whilst maintaining the position in relation to the pleading and proving of special damages, had no difficulty with the first-listed and largest item: - that for $1,145,400.00 for the bone-graft surgery. This, therefore, will be allowed.

[46] The other items, as well, will also be allowed as the court finds them to be reasonable and to have been proven.

General Damages

[47] Exhibits 8, 9 and 10 are the main exhibits that catalogue the injuries that the claimant, Odain McIntyre, sustained. These may be summarized as follows: (i) loss of three permanent upper incisor tooth and one milk tooth; (ii) fracture of teeth 24 and 25 of the mandible; (iii) the permanent teeth loss has led to a lack of extra oral bone growth

in the anterior maxilla. With the recommended surgery, there will be aesthetic improvement; but it will not attain 100% of what it was before.

[48] It was submitted on behalf of this claimant that the sum of $2,000,000 would be appropriate for an award for pain and suffering and loss of amenities. This submission is based on an assessment of three cases. For one, there is **Alexander Garwood v Lincoln Quinland** – reported at volume 6 of Khan, page 190. The injuries in that case involved the loss of two upper incisors; fracture of the right zygomatic bone; a loose canine tooth, with head injury and lacerations to the left knee, right eye, lower lip and right chin. The award that was made in that case equates to approximately $1.6 million today. Second, there is the case that is reported on page 63 of the 2nd edition (2011), of **Harrisons' Assessment of Damages** (Harrisons') of **Nelson Walters Engineers Ltd. & others v David Noel**. That case featured a fractured right maxillary central incisor; an acutely-split right upper incisor; an avulsed left maxillary central incisor; an acutely-missing left upper incisor; abrasion to the right cornea and lacerations and abrasions to the face. The claimants' counsel submits that that award would be worth some $591, 648 today. The other case is that of **Carmen Bartley v H.L. Bernard** (Harrisons', 2nd edition, page 62). The claimant in that case underwent the extraction of a single tooth; it was discovered that she had traumatized tissue to the area of the lower second molar; had pieces of her mandible protruding through the lacerated tissue; had a fracture to the distal portion in front of the lower left second molar, exposing pulp; and the removal of the buccal and lingual plate on either side of the socket. It was submitted that the award in that case updates to approximately $1.16 million today.

[49] For the 1st defendant, the proposed award for pain and suffering and loss of amenities is $600,000.That submission is based on a total of five cases, two of which (**Garwood v Quinland** and **Walters v Noel**) were referred to by the claimants' counsel and have already been discussed. The remaining three cases are: (i) **Constance Johnson v Exclusive Holidays of Elegance et al** (Khan, volume 6, page 188); (ii) **George Dawkins v Jamaica Railway Corporation** (Khan, volume 5, page 233); and (iii) **Collie Francis v Denzil Nugent** – Harrisons', page 62.

[50] In the **Constance Johnson** case, the personal injuries there included: loss of consciousness; swelling of face; abrasions to left shoulder, arm and hand; and, of most relevance to this case, a fractured mandible. She was left with no significant residual symptoms – just scarring in a few areas. That award amounts to approximately $1.29 million today.

[51] In the **George Dawkins** case, which updates to some $1.78 million, the main injury for which this case is used is a fracture of the mandible; and fracture of the upper jaw with cranio-maxillary disruption. Additionally, there was some loss of consciousness; fractures of the inferior orbital area on the left side of his face, associated with severe nose bleed; laceration and swelling of the tongue; and lacerations above the elbow, of the upper lip and below the left eye. A tracheostomy had to be performed to facilitate breathing, which was not closed until 15 days after. He also needed surgery to stabilize his loosened upper jaw. He was left with facial deformity and scarring which called for correction by further surgery. Additionally, *inter alia*, his sense of smell was impaired.

[52] The case of **Collie Francis** involved a fracture of the right mandible; abrasion and laceration to the right temporal region; pain and tenderness to the back. It was submitted that that award is now worth $841, 421.28.

[53] To the court, it appears that the cases of **Walters** and **Francis** are not directly comparable and would not make the best guides in arriving at what the best award would be in this case. The injuries in this case appear to be worse than the injuries in those cases.

[54] It seems to the court that the cases of **Constance Johnson; Alexander Garwood** and **George Dawkins** are those that provide the best guides to what an appropriate award would be in this case. The **Constance Johnson** case, however, seems to be less serious than the instant case, though not by far. It would have to be used as a base that should be increased somewhat. On the other hand, in the court's view, the cases of

Garwood and **Dawkins**, seem somewhat worse – in particular the **Dawkins** case. In **Garwood**, for example, apart from the two upper incisors that were lost at the time of the accident; the claimant in that case also stood to lose an additional eight teeth. He also suffered numbness and throbbing headaches. Similarly in **Dawkins**, the claimant there suffered severe nose bleed as a result of the accident; had difficulty breathing through the left nostril and an impaired sense of smell, among other injuries and disabilities. The awards in these cases, if they are to be used, would have to be discounted in consideration of these observations. Using these three cases, the award would have to be somewhere above the award in the **Johnson** case and somewhere below the awards in the cases of **Garwood** and **Dawkins**.

[55] Adopting this approach, it appears to the court that an award that would be fair and reasonable in all the circumstances is $1, 550,000.00. In arriving at this award, the court has reviewed the evidence, both in Odain McIntyre's witness statement and that of Ms. Johnson which speak to his pain and suffering, in particular paragraphs 12, 13, 14 and 15 of his witness statement and paragraphs 19-21; 23-24; 29, 30 and 31 of Ms. Johnson's witness statement. These, together, paint a graphic picture of the extent of his injuries and their sequelae. For example, paragraphs 19 and 20 of Ms. Johnson's witness statement read as follows:

> "19. I went back to the hospital to look for my son and I observed him lying in the hospital bed and was connected to a drip. His mouth area, lips and gums were completely torn off and he had bandages on his head. I also observed that he had cuts on his face, hands and feet.
>
> 20. When I looked at his face I could see bones, normally not visible because of skin and flesh, protruding from his mouth."

The Claimant, Emilyn Lothian

General Damages

[56] Exhibit 12 shows that this claimant's main injuries were: (i) a 1cm laceration on the forehead, which wound was closed with steristrips; (ii) mild tenderness over the lower ribs on the left side. She was expected to have fully recovered in 2 months' time.

[57] Reliance has been placed by both sides on the case of **Eric Ward v Lester Barcoo** – reported in Harrisons' at page 206. The claimant in that case sustained blows to the right foot; and blows to the right side of the chest, resulting in tenderness and pain in the lower back. He was treated at hospital and sent home. That award would be somewhere in the region of $425,000.00 today. On behalf of the 1st defendant, it was submitted that the injuries in that case were far more serious than the injuries in the instant case. An award in the region of between $150,000 and $200,000.00 would therefore be reasonable (the submission went). On behalf of the claimants, on the other hand, it was submitted that this award should be used as a guide only in respect of the injuries to the chest; and that the award in another case should be added to it to arrive at a fair award. That other case is **Reginald Stephens v James Bonfield & another** – reported at volume 4 of Khan at page 212. An abrasion on the left leg and a bruise on the right foot were the injuries in that case, with the claimant experiencing pain for about four weeks. That award in today's money is some $203,000.00. It was submitted that a reasonable award for this claimant would be $725,000.00.

[58] The court does not share the view that the **Eric Ward** case is far more serious than the instant case, thus warranting a reduction of more than half. On the other hand, neither is it of the view that an award in another case ought to be added to it in order to make the award in that case reasonable. In the court's view, the injuries in the **Eric Ward** case and the instant case are sufficiently comparable (though not exactly the same), to make it possible to use it (and it alone) as a general guide, with adjustments. An award in the sum of $350,000.00 would, in the court's view, be fair compensation for this claimant.

Disposal

[59] On February 11, 2013 it was ordered that damages were to be assessed against the 2nd defendant in any event. It was also ordered that notice of trial be served on him. No proof of such service has, however, been provided. In light of all the foregoing, the following will be the orders:

(i) Judgment for the claimant, Cheryl Johnson, against the 1st defendant (and damages assessed against the 2nd defendant) as follows:

(a) For special damages, the sum of $152,000.00 with interest thereon at the rate of 6% per annum from May 28, 2000 to June 21, 2006; and at the rate of 3% per annum from June 22, 2006 to February 7, 2014;

(b) For general damages for pain and suffering and loss of amenities, the sum of $900,000.00 with interest thereon at the rate of 6% per annum from April 26, 2006 to June 21, 2006; and at the rate of 3% per annum from June 22, 2006 to February 7, 2014;

(c) Costs to be agreed or taxed.

(ii) Judgment for the claimant, Odain McIntyre, against the 1st defendant (and damages assessed against the 2nd defendant) as follows:

(a) For special damages, (1) the sum of $571,600.00 with interest thereon at the rate of 6% per annum from May 28, 2000 to June 21, 2006; and at the rate of 3% per annum from June 22, 2006 to February 7, 2014; (2) the sum of $1,145,400.00 being the cost of future bone-graft surgery; (3) the sum of $436,000.00 being the cost of future corrective implant surgery.

(b) For general damages for pain and suffering and loss of amenities, the sum of $1,550,000.00 with interest thereon at the rate of 6% per annum from April 26, 2006 to June 21, 2006; and at the rate of 3% per annum from June 22, 2006 to February 7, 2014;

(c) Costs to be agreed or taxed.

(iii) Judgment for the claimant, Emilyn Lothian (through her administrator ad litem, Odain McIntyre), against the 1st defendant (and damages assessed against the 2nd defendant) as follows:

(a) For general damages for pain and suffering and loss of amenities, the sum of $350,000.00 with interest thereon at the rate of 6% per annum from April 26, 2006 to June 21, 2006; and at the rate of 3% per annum from June 22, 2006 to February 7, 2014;

(b) Costs to be agreed or taxed.