



[2024] JMSC Civ. 17

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV00390

BETWEEN	ROSEMARIE LEVY	CLAIMANT
AND	RICHARD McLEOD	1ST DEFENDANT
AND	WINSTON THOMPSON	2ND DEFENDANT

IN OPEN COURT

Ms. Rochelle Haynes instructed by Lawrence & Haynes Co. appearing for the Claimant

Mr. Patrick Peterkin instructed by PeterMc & Associates appearing for the 2nd Defendant

1st Defendant present but unrepresented

Heard: November 6th, 2023, February 1st, 2024 and February 22nd, 2024

Assessment of Damages — Personal Injury — Motor vehicle accident — Negligence — Pain and suffering and loss of amenities — Special damages — Soft tissue injury to left waist — Multiple abrasions to skin — Whiplash injury of cervical spine — Traction brachial plexopathy — Chronic Lumbosacral strain — Bilateral Knee Medial Bursitis — Left Metatarsalgia — 3% whole person impairment.

T. HUTCHINSON SHELLY, J

BACKGROUND

- [1] The matter before the Court for assessment of damages finds its origins in a motor vehicle accident which occurred along Roselle Main Road in the parish of Saint Thomas on the 25th of March 2019. The collision occurred between a motor vehicle which was being driven by Mrs. Rosemarie Levy, a schoolteacher and a motor vehicle bearing the registration number **PG1853** which was being driven by the 1st Defendant, Mr. Richard McLeod, the servant and/or agent of the 2nd Defendant, Mr. Winston Thompson. It is Mrs. Levy's case that the collision occurred as a result of the negligence of Mr. Richard McLeod who caused the left front end of his motor vehicle to collide with the front right section of the Claimant's motor vehicle.
- [2] On the 3rd of February 2021, Mrs. Rosemarie Levy filed a Claim Form and Particulars of Claim seeking damages for personal injuries, loss and expenses. An Acknowledgement of Service was filed on behalf of the 2nd Defendant on March 12th, 2021 in which partial admissions were made. No Acknowledgement of Service was filed on behalf of the 1st Defendant, Mr. Richard McLeod.
- [3] On the 6th of May 2021, Default Judgment was entered against the 1st and 2nd Defendants and noted in **Judgment Binder 777 Folio 153**. In furtherance of that judgment, the Claimant has approached this Court for damages to be assessed. On November 6th, 2023 and February 1st, 2024, the Claimant gave evidence as to the quantum of damages that she believes the Court should award.
- [4] In the course of the hearing, the 1st Defendant represented himself whilst the 2nd Defendant was represented by Mr. Patrick Peterkin.

ISSUE

- [5] The question of liability having already been determined, the sole issue for the Court is:
- What quantum of damages, if any, is the Claimant entitled to?

THE CLAIMANT'S EVIDENCE

- [6] At the hearing, Mrs. Levy was sworn and her witness statement dated January 27th, 2023 was allowed to stand as her evidence-in-chief. The Claimant stated that after the collision, she was trapped in her vehicle and only became free with the assistance of passers-by. She explained that she was taken to the Princess Margaret Hospital in the parish of Saint Thomas where she received medical treatment and was admitted for three (3) days.
- [7] She recounted that she suffered a lot of pain as a result of the numerous injuries which she received. She stated further that she was discharged from the hospital in a wheelchair and had to receive medical care for approximately four (4) months until July 2022. This involved visits to the Princess Margaret Hospital twice a week and physiotherapy twice a week. In respect of the latter, she incurred expenses in the sum of **Fifty-One Thousand Five Hundred Dollars (\$51,500.00)**.
- [8] Mrs. Levy experienced immense difficulty walking and had to use a walker or a cane. She was referred to a Pain Specialist Dr. Stewart-Murray at Andrews Memorial Hospital and had one (1) session with him during which he administered three (3) injections to her neck for excessive pain. A receipt showing the total cost of **Ten Thousand Dollars (\$10,000.00)** was exhibited in respect of this expense.
- [9] The Claimant was also examined by Dr. Melton Douglas, a Consultant Orthopaedic Surgeon who administered treatment which included injections to her knees and the removal of fluid from the same area. A medical report prepared by him was subsequently placed into evidence.
- [10] Mrs Levy also relied on medical reports prepared by Dr. Warren McCalla dated October 7th, 2019 and Dr. Cecil Batchelor dated March 25th, 2019. She produced receipts for the expenses associated with her treatment. The following documents were agreed and admitted into evidence:

1. Medical Report of Dr. Warren W McCalla dated October 7th 2019 – Exhibit 1

2. Medical Data Report of Consultant Dr. Cecil Batchelor dated March 25th, 2019 – Exhibit 2
3. Police Report dated September 21st 2020 – Exhibit 3
4. Receipt for Medical Report from Dr. Melton Douglas dated December 16, 2020 – Exhibit 4
5. Receipt from Apex Health Care Associates dated August 9, 2019 – Exhibit 5
6. Receipt from Apex Health Care Associates dated July 12, 2019 – Exhibit 6
7. Receipt from Apex Health Care Associates dated September 4, 2020 – Exhibit 7
8. Receipt from Apex Health Care Associates dated September 4, 2020– Exhibit 8
9. Receipt from Apex Health Care Associates dated January 17, 2020 – Exhibit 9
10. Receipt from Apex Health Care Associates dated October 11, 2019 – Exhibit 10
11. Receipt from Apex Health Care Associates No.352332 dated November 22, 2019 – Exhibit 11
12. Receipt from Apex Health Care Associates No. 352711 dated November 22, 2019 – Exhibit 12
13. Receipt from Andrea D.M. Robinson for physiotherapy treatment session dated October 17, 2019 – Exhibit 13
14. Receipt from Andrea D.M. Robinson for physiotherapy treatment session dated October 31, 2019 – Exhibit 14
15. Receipt from Simone A. Mahfouz for physiotherapy services dated March 2, 2019 – Exhibit 15
16. Receipt from Simone A. Mahfouz for physiotherapy services dated March 11, 2020 – Exhibit 16
17. Receipt from the Princess Margaret Hospital for Medical Certificate dated May 9, 2019 - Exhibit 17
18. Receipt from Marjan's Pharmacy dated July 29, 2019 – Exhibit 18
19. Receipt from Marjan's Pharmacy dated March 27, 2019 - Exhibit 19
20. Receipt from Marjan's Pharmacy dated April 3, 2019 – Exhibit 20
21. Receipt from Marjan's Pharmacy dated March 30, 2019 – Exhibit 21
22. Receipt from Marjan's Pharmacy dated March 30, 2019 at 6:28pm – Exhibit 22

23. Receipt from Marjan's Pharmacy dated March 26, 2019 – Exhibit 23
24. Receipt from Marjan's Pharmacy dated March 4, 2019 – Exhibit 24
25. Receipt from Andrea D.M. Robinson for physiotherapy assessment and treatment dated April 4, 2019 – Exhibit 25
26. Receipt from Andrea D.M. Robinson for physiotherapy services dated April 11, 2019 – Exhibit 26
27. Receipt from Andrea D.M. Robinson for physiotherapy services dated April 18 2019 – Exhibit 27
28. Receipt from Andrea D.M. Robinson for physiotherapy services dated April 25, 2019 – Exhibit 28
29. Receipt from Andrea D.M. Robinson for treatment dated May 2, 2019– Exhibit 29
30. Receipt from Andrea D.M. Robinson for physiotherapy dated May 9, 2019 – Exhibit 30
31. Receipt from Dr Stuart Murray for professional services (consultation and injection) dated July 19, 2019 – Exhibit 31
32. Receipt from T&MWrecking Service dated March 30, 2019 – Exhibit 32
33. Receipt and invoice from Winchester MRI Limited dated October 23, 2019 – Exhibit 33
34. Receipt and invoice from Winchester MRI Limited dated July 24, 2019 – Exhibit 34
35. Receipt from Apex Pharmacy dated July 12, 2019 – Exhibit 35
36. Receipt for Home Assistance dated April 4, 2019– Exhibit 36
37. Receipt for Home Assistance dated April 11, 2019 – Exhibit 37
38. Receipt for Home Assistance dated April 18, 2019 – Exhibit 38
39. Receipt for Home Assistance dated April 26, 2019 – Exhibit 39
40. Receipt for Home Assistance dated May 3, 2019 – Exhibit 40
41. Receipt for Home Assistance dated May 10, 2019 – Exhibit 41
42. Receipt for Home Assistance dated May 17, 2019 – Exhibit 42
43. Receipt for Home Assistance dated May 23, 2019– Exhibit 43
44. Receipt for Home Assistance dated May 31, 2019 – Exhibit 44
45. Receipt for Home Assistance dated June 7, 2019 – Exhibit 45
46. Receipt for Home Assistance dated June 14, 2019 – Exhibit 46
47. Receipt for Home Assistance dated June 21, 2019 – Exhibit 47

48. Receipt for Home Assistance dated June 28, 2019 – Exhibit 48
49. Receipt for Home Assistance dated July 5, 2019 – Exhibit 49
50. Receipt for Home Assistance dated July 11, 2019 – Exhibit 50
51. Receipt for Home Assistance dated July 21, 2019 – Exhibit 51
52. Receipt for Home Assistance dated January 16, 2020 – Exhibit 52
53. Receipt for Home Assistance dated February 13, 2020 – Exhibit 53
54. Receipt for Home Assistance dated March 4, 2020 – Exhibit 54
55. Receipt for Home Assistance dated August 15, 2020 – Exhibit 55
56. Receipt for Home Assistance dated August 27, 2020 – Exhibit 56
57. Receipt for Home Assistance dated September 8, 2020 – Exhibit 57
58. Receipt for Home Assistance dated September 30, 2020 – Exhibit 58
59. Medical Report of Dr. Melton Douglas dated December 11th 2020 – Exhibit 59
60. Questions sent to Dr. Melton Douglas - Exhibit 60
61. Responses given by Dr. Melton Douglas - Exhibit 61

[11] Mrs. Levy gave evidence of ongoing physical challenges in spite of the treatment received. She indicated that she still suffers from severe pain all over her body but particularly in the areas of her back, feet, neck, hands and fingers. She expressed that the back aches are triggered whenever she attempts to move around which causes her to feel weak and she has to hold onto something for support. She lamented the fact that she is unable to walk normally and has to put pressure on her heels in order to decrease the pain on the bottom of her feet.

[12] In cross-examination, when asked what is the main area in which she suffered injuries from the accident, Mrs. Levy stated, “my neck, my back, both hands and from knees towards my feet.” When asked if she still does physiotherapy, she responded by saying that she has discontinued physiotherapy as she has acquired a tensile machine that stimulates the nerves in her back and feet and massages both areas.

[13] Mrs. Levy was cross-examined by Mr. Richard Thompson who suggested to her that he had seen her walk without the use of the stick (cane), and she denied this. He also suggested that he had seen her at her gate without a stick and she explained that whenever she stood at the gate, she would lean her stick on it.

SPECIAL DAMAGES

[14] The Claimant seeks the sum of **Five Hundred and Twenty-Two Thousand Eight Hundred and Fifty-Three Dollars and Fifty-Nine Cents (\$522,853.59)** for special damages in respect of the costs incurred as a result of medical expenses and home assistance required. She has provided a plethora of receipts which have already been outlined. The documentation in proof of these expenses were admitted into evidence as exhibits 1 through to 61. I have reviewed these documents and I am satisfied that these sums were expended and this was done in keeping with the purpose stated. The documents were also served on both Defendants and no objection was raised to the sums being awarded. Accordingly, this sum is awarded to the Claimant under this head of damages.

GENERAL DAMAGES

Medical Reports

Dr. Cecil Batchelor

[15] The report of Dr. Batchelor outlined that Mrs. Levy was diagnosed as having multiple tissue injury and blunt chest trauma. The findings on examination revealed mild to moderate painful distress but no deformity. Minor bruises were observed in the area of the seatbelt. Mrs. Levy also suffered multiple abrasions to the lower lip, right inner arm, knees and right foot. X-rays conducted did not reveal any fractures. She was discharged from the hospital and given analgesics for her pain. She was advised to return to the hospital for review.

Dr. Warren W. McCalla

[16] Dr Warren W. McCalla's report indicates that he examined Mrs. Levy for the purpose of evaluating and managing her injuries as well as writing the report. His findings on examination of Mrs. Levy were as follows:

- There was painful distress.
- There was difficulty to bear weight.
- There was inability to walk without support.

Upper Extremities

- There were multiple small lacerations seen to both upper extremities. The right side was greater than the left side.
- There was tenderness to touch in both upper extremities.
- The grip to her right hand was significantly reduced.

Lower Extremities

- There was swelling to both lower extremities as well as significant signs of inflammation secondary to trauma.
- There was tenderness noted to both lower extremities.
- The weakness in both of her legs is significant.
- There is hyperreflexia.

Cervical Spine

- There was tenderness to both sides of her sternocleidomastoid muscles.
- Her range of motion is reduced.
- There is tenderness in her cervical spine area.

Chest and abdomen

- There is impression of abrasion to her lower abdomen and to her chest, particularly in the area where the seatbelt was applied.

Back

- There was tenderness to psoas muscles to both sides.

[17] The Claimant was diagnosed as having soft tissue injury, muscle spasm, peripheral nerve damage secondary to motor vehicle trauma and multi-abrasion to skin. In respect of future treatment and rehabilitation, he recommended that she undergo an MRI, engage in physiotherapy and consult a Neurologist and

Orthopaedic Specialist. The Claimant was also placed on sick leave and prescribed analgesics.

[18] Mrs. Levy was reviewed after having completed six (6) physiotherapy sessions and Dr. McCalla observed that she continued to experience pain in both legs and had difficulty bearing weight. There was also marked weakness in her upper and lower limbs. The power in her upper and lower extremities was reduced. She also had tenderness and swelling to both lower extremities especially to the side of her feet. He reported that she had nerve compression resulting in peripheral nerve injuries.

[19] In respect of her prognosis, Dr. McCalla noted that the Claimant would be unable to carry out her daily functions for a protracted period of time. She would also require specialist consultation to manage her nerve injuries as well as counselling to cope with the psychological trauma she suffered.

Dr. Melton Douglas

[20] Dr. Douglas's report outlined the following observations on consultation with Mrs. Levy:

1. Pain in the neck
 - Deep pain which is present for majority of the times
 - Localized to the right side of the neck in the seatbelt area
 - Aggravated by head movement and sitting up for more than 90 minutes.
2. Pain in the right arm and forearm.
3. Pain in the front of the chest in the seatbelt area.
4. Pain in the front of the right thigh radiating to the leg and toes.
5. Pain in the left knee radiating down to the toes.
6. Swelling and pain of both knees affecting her ability to walk properly.
7. She has a slow and laboured gait and has to be assisted by a cane.

[21] His findings on physical examination of her were as follows:

Cervical Spine/Neck

- No gross deformities
- Tenderness to the right anterior and posterior group of neck muscles
- Range of motion (ROM):
 - Forward Flexion: 70 degrees
 - Extension: 40 degrees
 - Right Rotation: 45 degrees
 - Left Rotation: 45 degrees
 - Right Lateral Flexion: 60 degrees
 - Left Lateral Flexion: 30 degrees

Upper Limbs

- Power
 - Right: Grade 4/5 in C5, C6, C7, C8 and T1 myotomes
 - Left: Grade 5/5 throughout
 - Normal sensation

Lumbar Spine/Lower Back:

- Able to flex forward and to the sides without much discomfort

Lower Limbs:

- Able to stoop half-way down
- Can stand on one leg at a time supporting her body weight
- Power
 - Left: Grade 5/5 throughout
 - Right: Grade 5/5 throughout
- Hypersensitivity to both knees and feet

[22] In respect of her treatment, management and rehabilitation, he recommended analgesics medication in the form of Pregabalin (**used to relieve neuropathic pain 'pain from damaged nerves' that can occur in your arms, hands, fingers, legs, feet or toes**) and Celebrex (**treats mild to moderate pain and inflammation**). She was advised to do physiotherapy sessions, MRIs of cervical spine and brachial plexus as well as trigger point injections.

[23] The Claimant was seen by Dr. Douglas on the 9th of August 2019 for a review and in that review, he noted that the Claimant consulted the Pain Specialist Dr. Stuart-Murray for one (1) visit and was treated with trigger point injections in three (3) sites in her neck on the 19th of July 2019 and remained compliant with the neuroleptic drugs. He observed that there was significant improvement in respect of the neck pain and an increase in the strength of her right upper limb. He noted that she informed him that she was able to perform tasks such as cooking and daily living. She was also able to drive. There was however a burning sensation in the sole of both feet with the right being more severe.

[24] Dr. Douglas reported that the MRI scans of her cervical spine and brachial plexus revealed the following:

A. Cervical Spine:

1. C5 - 6 disc herniation with mild central stenosis and spinal cord contact.
2. C4 - 5 disc herniation with spinal cord contact.
3. C6 - 7 and C7-T1 disc herniation. Small right-sided C7-T1 cystic structure, likely pseudomeningocele.
4. Mild reversed lordosis.

B. Brachial Plexus:

1. There is likely right C8 nerve root injury with pseudomeningocele.

[25] On the 11th of October 2019, the Claimant was reviewed by Dr. Douglas who noted that she was still experiencing pain in the left knee and inner section of the left ankle. There were also concerns as to the stability of her left knee and its ability to support her weight. She was still reliant on the cane to ambulate. There was no neck pain except for circumstances where there was too much movement of the neck.

[26] Upon physical examination, the doctor noted that there was swelling of the medial aspects of both knees as well as tenderness to the medial aspect above and below the joint line. He observed that she did not experience any pain with valgus stress

and only mild pain with varus stress. All of her ligaments were stable. He advised her to do an MRI scan of both knees.

[27] The Claimant was reviewed on the 22nd of November 2019 having commenced physiotherapy sessions on her knees on October 17th, 2019. She reported some improvement to the right knee with less pain, continuous pain in her left knee, weakness in her left foot and an inability to stand flat on that foot. She also reported that there was improvement in her right upper limb and her continued reliance on a cane in order to walk properly.

[28] The MRI scans of her bilateral knees revealed the following findings:

A. Left knee:

1. Mild tibiofemoral arthritis and grade 1 chondromalacia patella.
2. Posterior horn medial meniscus degeneration, mild quadriceps and patella tendinitis, Hoffa's fat pad oedema, separated Baker's cyst, mild deep infrapatellar bursitis, minimal joint effusion, mild infrapatellar and medial subcutaneous soft tissue oedema.

B. Right knee:

1. Moderate osteoarthritis, worst at lateral tibiofemoral compartment.
2. Moderate joint effusion, severe synovitis, trace Baker's cyst, small popliteal fossa ganglion cyst.
3. Lateral meniscal tear. Possible anterior parameniscal cyst.
4. Grade 2 MPFL tear, mild lateral patellar subluxation.
5. Mild ACL sprain (grade 1 injury). Mild popliteal tendinosis.

[29] Dr. Douglas administered an injection to her left knee and advised her to continue physiotherapy sessions and return for a review in January 2020. On the 17th of January 2020, Dr. Douglas saw the Claimant and continued his treatment of the left knee and both feet. He also observed that the pain in her neck and lower back had improved and were mildly symptomatic.

[30] Mrs. Levy was reviewed on the 4th of September 2020 after she had completed ten (10) visits to the physiotherapist. Dr Douglas stated that she informed him as follows:

1. There was a “little bit” of improvement in the soles of the feet. The symptoms returned after the end of therapy.
2. The pain in the inner aspects of her knees has not settled and has remained swollen and painful. She uses a cane to offload the pressure over the ball of the left forefoot which is painful.

[31] In terms of treatment, cortisone injections were administered to both knees. She was advised to reduce her activity as this would allow the inflammation to settle and also wean her from using the cane. She was diagnosed with the following:

- Whiplash injury of cervical spine
- Traction brachial plexopathy
- Chronic lumbosacral strain
- Bilateral knee medial bursitis
- Left metatarsalgia

[32] With regard to her prognosis, Dr Douglas states:

“that the initial examination of her cervical spine revealed muscle spasms with associated decreased range of motion and a mild decrease in the power of the right upper limb. This has subsequently improved, and she has regained strength in her right upper limb. Bilateral knee pain, worse on the left than right, is a persistent issue which continues to impair her ambulation and has led to the pathology in her left foot as a result of compensation. As a teacher, these injuries will severely impact her functionality as she will now be unable to stand for a prolonged duration and needs the assistance of a cane for ambulation. Walking up and down stairs will prove difficult as well. She is currently undergoing conservative management for her knee pathology, which includes analgesics and physiotherapy. Thus far, her knee pain remains constant and is unlikely to resolve due to its persistence over one (1) year post-incident. If her knee pathology does

not improve, she will require arthroscopic surgery of her knee with an estimated cost of **Nine Hundred Thousand Dollars (\$900,000.000).**”

[33] In relation to her impairment, Dr. Douglas assessed Mrs. Levy as having suffered a whole person impairment of 3%. In respect of the impact of her injuries on her professional obligations, Mrs. Levy informed the Court that although she was still employed as a teacher, she now plays a largely administrative role and works solely online. She no longer goes into the school as she is unable to manage this, neither is she able to write on the chalkboard. Her time is now engaged in marking scripts, writing reports and marking lesson plans.

SUBMISSIONS ON DAMAGES

[34] In relation to the quantification of the award for pain and suffering and loss of amenities, Ms. Haynes relied on the following authorities:

- a. **Christopher Russell and Shirley Russell v Patrick Martin & Sheldon Ferguson** 2006HCV03322 (February 19, 2008) Khan Vol. 6 page 118. In this case, the male claimant suffered pain in the neck and right wrist, tenderness of the trapezius muscle on lateral flexion and rotation of the neck and marked tenderness of the dorsal aspect of the right wrist. He was treated with topical and oral analgesics. When he was seen by the Consultant Orthopaedic Surgeon, Dr. Rose, two (2) years after the accident, he complained of difficulty sleeping due to the neck pains and having to restrict his farming work to five (5) hours a day. He was assessed as having chronic cervical strain that would cause intermittent neck pains that would be aggravated by manual work. His permanent partial disability was indicated to be 5% of the whole person. In February 2008, he was awarded General Damages in the amount of **One Million Six Hundred and Fifty-Five Thousand Eight Hundred and Five Dollars and Seventeen Cents (\$1,655,805.17)** when the CPI was 46.5. This value was updated to **Four Million Eight Hundred and Sixty-Seven Thousand Seven Hundred and**

Eleven Dollars and Eleven Cents (\$4,867,711.11) when the current CPI of 136.7 for the month of December 2023 is applied.

- b. **Sasha-Gay Downer (b.n.f. Myrna Buchanan) v Anthony Williams and Dovon Griffiths** 2005HCV1825, Khan Vol. 6 pg. 124. The Claimant suffered head injury with transient loss of consciousness, whiplash injury, lumbar spasms, tender swelling to anterior aspect of left thigh, and tenderness with swelling to left hip. She complained of neck pains and intermittent lower back pain. She was diagnosed with cervical strain, mechanical lower back pains and strained abductor muscles of the left thigh. She benefitted from physical therapy sessions. The claimant was assessed with 5% disability of the whole person. She was awarded general damages in the sum of **One Million Five Thousand One Hundred and Fifty Dollars (\$1,005,150.00)** in July 2007 when the CPI was 40.7. This figure updates to **Three Million Three Hundred and Seventy-Six Thousand and Nineteen Dollars and Seventy-Seven Cents (\$3,376,019.77)**, using the December 2023 CPI of 136.7.
- c. In **St. Helen Gordon and others v Royland Mckenzie** CL 1997 G 025 (10th July 1998) Khan Vol. 5 page 152. The Claimant suffered whiplash and experienced pain in the areas of her neck and shoulder. The Claimant initially had a 50% decrease in neck and right shoulder movement which had improved by 80% when she was last seen approximately 2 ½ years after the accident. She then had mild tenderness at the base of the neck and could not lift children, turn her neck to drive in reverse nor do a number of chores. She was assessed as having a whole person disability of 3% that was expected to improve slowly with time. She was awarded General Damages for pain and suffering and loss of amenities in the amount of **Four Hundred Thousand Dollars (\$400,000.00)**. when the CPI was 18.5. This figure is updated to **Two Million Nine Hundred and Fifty-Five Thousand**

Six Hundred and Seventy-Five Dollars and Sixty-Seven Cents (\$2,955,675.67) using the CPI of 136.7 for the month of December.

[35] Learned Counsel referred to the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases – Orthopaedic Injuries (knee Injuries) for useful guidance on knee injuries which are classed as severe and moderate. Counsel submitted that given that Mrs. Levy was assigned a total impairment rating of 3% of the whole person, then her injuries should be classed between Category (iii) for severe injury and Category (i) for moderate injury. Counsel submitted that an appropriate award would be parallel to that awarded in **Christopher Russell** (supra) and **Sasha Gaye Downer** (supra). Ms. Haynes further submitted that this award should be in alignment with the lower limit of the Category (iii) severe injuries which is between the range of **Four Million Two Hundred and Sixty-Two Thousand Four Hundred and Seventy-Two Dollars (\$4,262,472.00)** and **Four Million Six Hundred and Eighty-Nine Thousand Eight Hundred and Sixty-Four Dollars (\$4,689,864.00)**. In respect of the cases cited by the 2nd Defendant, Ms. Haynes asserted that they are not similar to the case at bar and asked the Court to favour the authorities cited by the Claimant.

[36] Mr. Peterkin relied on the following cases:

1. **John Thomas v Marcella Francis and Anor**, Khan's Volume 5 page 54. The Claimant suffered a swollen left knee and an avulsion fracture of the anterior tibial plateau. He had open reduction and reattachment of the fragment under general anaesthetic. He remained in hospital for three (3) days and was discharged on crutches. One year later, the plaintiff was still in pain, had stiffness in the knee, and flexion was restricted 0-75 degrees. He could no longer ride a motorcycle for the performance of his duties. He was assessed with a permanent partial disability of the left lower limb of 15%. He was awarded general damages in the amount of **Four Hundred and Fifty Thousand Dollars (\$450,000.00)** in September 1999 when the CPI was 19.7. This figure

would now convert to approximately **Three Million One Hundred and Twenty-Two Thousand Five Hundred and Eighty-Eight Dollars (\$3,122,588.00)**.

2. **Winnifred Hunter v Michael Brown**, Khan's Volume 6, page 56. The Claimant had "left hip to foot restricted", suffered laceration to back of head, fracture to lateral tibial plateau and marked antero-lateral bruising over the left knee. She had a residual disability of 24% of the whole person and was awarded **Eight Hundred and Fifty Thousand Dollars (\$850,000.00)** in July 2002 when the CPI was 24.1. The updated award is **Four Million Eight Hundred and Twenty-One Thousand Three Hundred and Sixty-Nine Dollars and Twenty-Nine Cents (\$4,821,369.29)**.

[37] Mr. Peterkin submitted that based on the cases cited an award for **Two Million Dollars (\$2,000,000.00)** is appropriate. In respect of the cases cited by the Claimant, Counsel argued that both **Christopher Russell** (supra) and **Sasha Gaye Downer** (supra) suffered impairments of 5% Whole Person Impairment which was more serious than the instant case and the award in the instant case should be less.

DISCUSSION/ANALYSIS

[38] In comparing these cases presented for consideration by the Claimant, I find that the injuries suffered by the Claimant in the instant case appear to be more serious than those suffered by the Claimant in the cases of **Christopher Russell** (supra) and **St Helen Gordon** (supra). In the **Christopher Russell** decision, the main issue appeared to be the restriction on the full range of motion of the cervical spine. In the instant claim, Mrs. Levy sustained injuries to the neck, back and upper and lower extremities. Additionally, surgery was indicated as the likely solution to resolve her knee issues which were not intermittent but ongoing. It is

acknowledged that Mr. Russell was assessed as having a 5% Permanent Partial Disability, but this was limited to his cervical spine.

- [39] The injuries of the Claimant in **St Helen Gordon** were similar only in respect of the neck injury suffered by the instant Claimant. Although she was also assigned a Whole Person Disability of 3%, the doctor indicated that this was likely to improve with time. This situation is unlike that of the instant Claimant whose injuries were far more numerous and severe and whose prognosis indicated that she is unlikely to experience any improvement without surgical intervention.
- [40] Apart from the observation that the nature and severity of Mrs. Levy's injuries far outweighed theirs, her treatment and rehabilitation process spanned a much longer period. The medical evidence indicate that her injuries have acutely impacted her functionality as she is unable to stand for a prolonged duration. She is compelled to walk with the assistance of a cane and the pain in her knee remains constant.
- [41] The **Sasha Gaye Downer** (supra) case is closely comparable to the instant claim with some differences. **Ms. Downer** was only 12 years old at the time of the accident. She was assigned a disability rating of 5 % of the whole person. Similar to Mrs. Levy, she experienced lower back pains after standing for short periods and her mobility was adversely impacted.
- [42] In reviewing the cases presented by the Defendant, I found that the injuries outlined were more extensive and the level of disability suffered significantly greater. Of the two cases cited, the case of **John Thomas** (supra) offered some guidance for the assessment of the Claimant's damages as a knee injury had also been sustained. **John Thomas** had a swollen knee which was very stiff with almost zero movement whereas the instant Claimant experienced chronic pain in her knee. The authority of **Winnifred Hunter** did not offer much assistance as the injuries suffered by that Claimant are different from those suffered by the Claimant in the case at bar.

[43] Having carefully reviewed the cases and medical evidence, I observed that both the **John Thomas** and **Sasha Gaye Downer** decisions pre-date that of **Christopher Russell**, while the awards given are still relevant for the purpose of determining the appropriate sum which should be given to the Claimant, the Court would be mindful of this factor. Additionally, the award in the **John Thomas** case appears to be very conservative, taking into account the severity of the injuries and level of disability suffered. After careful consideration of the matter, it is the Court's finding that Mrs. Levy's injuries would place her in the midpoint between the awards given in the **Russell** and **Downer** decisions with some adjustment for the fact that Mrs. Levy's level of disability is slightly less severe. In the circumstances, an award of **Three Million Seven Hundred and Fifty Thousand Dollars (\$3,750,000.00)** seems appropriate to address the loss and damages suffered.

DISPOSITION

[44] Accordingly, damages are assessed as follows:

1. Special Damages are awarded in the sum of **Five Hundred and Twenty-Two Thousand Eight Hundred and Fifty-Three Dollars and Fifty-Nine Cents (\$522,853.59)** with interest at the rate of 3% from March 25th, 2019 to February 22nd, 2024.
2. General Damages are awarded for pain and suffering in the sum of **Three Million Seven Hundred and Fifty Thousand Dollars (\$3,750,000.00)** with interest at the rate of 3% from February 12th, 2021 to February 22nd, 2024.
3. Costs awarded to the Claimant to be agreed or taxed.
4. Claimant's Attorney to prepare, file and serve the Judgment herein.