

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW & EQUITY DIVISION  
2014/CLE/GEN/01364**

**BETWEEN**

**LAVERNE SCRIVEN-ARMBRISTER**

**Plaintiff**

**AND**

**TRACY BROWN**

**First Defendant**

**and**

**HAL PROPERTIES LIMITED**

**Second Defendant**

**Before: DEPUTY REGISTRAR *EDMUND TURNER***

**Appearances:** Mr. Donovan Gibson for the Plaintiff  
Mr. Stephen Turnquest for the Defendants

**Hearing Dates:** 29th October 2021, and 22<sup>nd</sup> February 2022.

**J U D G M E N T**

**Deputy Registrar TURNER:**

**Introduction**

1. The issue for consideration is to determine the assessed amount of damages, pursuant to the ruling of Fraser J. given on 9<sup>th</sup> August 2015, which came to the conclusion that the injury to the Plaintiff was caused by the negligence of the First

Defendant.

### **Brief Facts**

2. On 23<sup>rd</sup> February 2014 the Plaintiff whilst a passenger on a 32 foot parasail boat, slipped and fell on the boat, which resulted in personal injury, loss and damage to the Plaintiff. The boat was driven by the 1<sup>st</sup> Defendant and registered to the Second Defendant.

### **Alleged Injuries Sustained**

3. The Plaintiff, born on 13<sup>th</sup> February 1960, was 54 years old at the time of the accident and complained of the following, i.e.:
- a. Severe lower back pain;
  - b. Lumbar disc herniation, and
  - c. Cervical Laminectomy.

### **Evidence of Dr. Georgiy Brusonavik**

4. The evidence of Dr. Georgiy Brusonavik was taken on the 22<sup>nd</sup> February 2022, and the Court took his evidence. However it must be noted that the aforementioned Dr. gave evidence to the fact that he is an Orthopedic Spine Surgeon, he is not a Registered Medical Practitioner within the Commonwealth of The Bahamas. Please note that Counsel for the Defendants had no issue with this fact. As a result, the medical conclusions arrived at by this medical doctor can indeed be persuasive to the Court considering his training and experience, but is not binding upon the Court. Please also note that he is the only medical expert called to give evidence in this matter.
5. Dr. Brusonavik examined the Plaintiff on the 26<sup>th</sup> June 2014, 7<sup>th</sup> October 2014, 17<sup>th</sup>, July 2014, 21<sup>st</sup> August 2014, 18<sup>th</sup> September 2014, 27<sup>th</sup> March 2015, 10<sup>th</sup> April 2015, 23<sup>rd</sup> June 2015, 9<sup>th</sup> July 2015, 22<sup>nd</sup> July 2015, 23<sup>rd</sup> July 2015, 30<sup>th</sup> September 2015, 20<sup>th</sup> January 2016, 12<sup>th</sup> April 2016, 5<sup>th</sup> July 2016, 20<sup>th</sup> September 2016, 20<sup>th</sup> Decmeber 2016, 1<sup>st</sup> January 2017, 23<sup>rd</sup> June 2017, 17<sup>th</sup> August 2017, 16<sup>th</sup> August 2021, and 7<sup>th</sup> January 2022.

## **Significant Dates**

### **7<sup>th</sup> October 2014**

6. On this date, C5-C6 degenerative disc disease with minimal herniation detected.

### **10<sup>th</sup> April 2015**

7. Previous MRI showed L3-L4, L5-S1 facet arthritis.

### **23<sup>rd</sup> July 2015**

8. There was a report re a fall at hospital and now the Plaintiff was experiencing worse pain in now her left leg, and this was besides right leg pain.

### **5<sup>th</sup> July 2016**

9. Dr. Brusovanik reported that there was a resolution to the back and thigh pain and that he would hold off on surgery for now.

### **17<sup>th</sup> August 2017**

10. MRI done and L4-L5 notes left disc herniation and mild spondylolysis in L5-S1 DDD.

### **1<sup>ST</sup> July 2022**

11. Recently had right side greater trochanteric injection that provided significant lasting relief. The assessment at this time was Lumbar L4-L5 degenerative disc disease M51.36.
12. From the above it can be seen that there were at least 22 doctor visits to Dr. Brusovanik, none of which involved Orthopedic Surgery, but alternative means of intervention to alleviate pain through the use of injections, physical therapy, and pharmaceutical products such as Tramadol. Predominantly, Lumbago or non-specific low back pain was the complaint. In addition, reference was also made to degenerative disc disease, as well as arthritis, which have more to do with age related issues as compared to symptoms from a slip and fall. As a result, it can be seen that the injury to the Plaintiff was minor in nature, and over a period of time resolved itself compared nearer the time of the incident.

### **Submissions of the Defendant re Quantum**

13. The general argument by Counsel for the Defendant is that the evidence of Dr. Brusonavik in no way makes a nexus between the alleged injury sustained by the Plaintiff and the events of 23<sup>rd</sup> February 2014. It is argued that nowhere does Dr. Brusonavik's report refer to the Plaintiff's fall as the cause of likely cause of the symptoms being experienced by the Plaintiff.
14. It is seen from Counsel for the Defendant's assessment of injuries sustained that predominantly the Plaintiff is in no apparent distress when examined by Dr. Brusonavik. Mention is made of C5-C6 degenerative disc disease, with minimal herniation, which Counsel for the Defense argues is the main reason for the Plaintiff's symptoms.
15. In addition, in the 11<sup>th</sup> report, there is allegation of a fall whilst at the hospital. Counsel for the Defense argues correctly that the symptoms from this fall are in no way tied to the fall that occurred on 23<sup>rd</sup> February 2014.
16. Predominantly it is argued that the report of Dr. Brusonavik did not assist the Plaintiff as it in no way made a nexus between the symptoms seen upon examination of the Plaintiff and the boating incident of 23<sup>rd</sup> February 2014.
17. Based on the recovery thus far, the lack of nexus, and reference to degenerative disc issues associated with aging, inclusive of arthritis, the Plaintiff is only entitled to nominal damages.

### **Cases**

18. Reference was made to the case of **QD2653**, a case with similar facts, i.e. the Plaintiff was 54, and there was an issue re lower back pain. In this case there was treatment for pain, but surgery was regarded as necessary. In this case there was an award of £7,121.72 or \$9,312.48.

### **Judicial Council Personal Injury Guidelines**

19. The Judicial council Personal Injury Guidelines were adopted by The Judicial Council on 6<sup>th</sup> March 2021. Here consideration is given to the fact that were are concerned with a minor back injury to a 54 year old at the time of the accident suffering from degenerative disc disease and arthritis. Please also note the relevant factor that even though considered, surgery never took place, and there was the predominant use of injections, physical therapy, and pharmaceutical products such as Tramadol. This in itself speaks volumes re the

seriousness of the injury.

20. As result, it is correct to categorize the injury as a ‘Minor Back Injury.’ Of relevance is the fact that the incident took place on 23<sup>rd</sup> February 2014, and according to the medical notes of Dr. Brusovanik, some 2 years and about 4 months later on 5<sup>th</sup> July 2016 when examined, the Plaintiff had a resolution to her back and thigh pain and a specific note was made to hold off on surgery. In making reference to category i). of the Judicial Council Guidelines, it is seen that in such circumstances **€12,000 to €20,000** is the range of assessed damages considering the fact that there is ‘*Substantial recovery without surgery takes place within 2-5 years.*’ In converting the same to dollars, it is seen that we arrive at a figure of **\$12,652.44**.
21. Taking into consideration the two issues relevant to age, i.e. degenerative disc disease with minimal herniation, and the MRI on 10<sup>th</sup> April which showed L3-L4, L5-S1 facet arthritis, the same have to be considered as not having any correlation to the incident that took place on 23<sup>rd</sup> February 2014. Towards this end, the aforementioned figure of \$12,652.44 ought to be reduced accordingly \$1,652.44 for the degenerative disease, and by \$1,000.00 for the facet arthritis, thus arriving at a figure consistent with that recommended by Counsel for the Defendant of some **\$10,000.00**.

### **Interest**

22. The law relating to the payment of interest on judgment debts is the Civil Procedure (Award of Interest) Act, 1992. Section 2 of the Civil Procedure (Award of Interest ) Act provides that:

**“2. (1)Every judgment debt shall carry interest at such rate as shall be prescribed by rules of court made by the Rules Committee constituted by section 75 of the Supreme Court Act levied under a writ of execution on such judgment:**

**Provided that nothing in this section shall apply in relation to any Judgment debt upon which interest is payable as of right, whether by virtue of an agreement of otherwise.**

23. The rate of interest payable on judgment debts is provided for under Rule 2 of the Civil Procedure (Rate of Interest )Rules, 2008, which provides that:

- a. **“For the purpose of section 2(1) of the Civil Procedure (Award of Interest) Act, the rate of interest is the prime rate of the Central Bank plus two per centum per annum.”**

24. As of the date, the current prime rate of the Central Bank as published on its website at <https://centralbankbahamas.com> is 4.25% per annum. As a general rule, interest runs from the time the judgment is pronounced-the incipitur rule as was recently affirmed by the Privy Council in **Rajesh Ramsarran v. The Attorney General of Trinidad and Tobago** Privy Council Appeal No. 18 of 2004.

25. Accordingly, interest payable on the costs as taxed is 4.25% per annum plus two per centum per annum which totals 6.25% per annum from the date of the Order being given by Justice Fraser, until payment in full.

26. Interest is accruing on outstanding costs in accordance with the provision of the Civil Procedure (Award of Interest) Rules at the rate of 6.25% per annum since the date of the judgment. Considering the date of judgment is 9<sup>th</sup> Aug 2016, some 5 years have passed thus far. Therefore  $5 \times 6.25 = 31.25/100 = 0.3125$ . Taking the aforementioned figure of \$10,000.00 and multiplying the same with 0.3125, we get the figure of **\$3,125.00**. Therefore, adding the same to the \$10,000.00 we get **\$13,125.00**, interest inclusive.

**Value Added Tax**

27. In considering VAT at 10%, i.e.  $0.1 \times 13,125 = \$1,325.5$ . Thus  $\$13,125.00 + \$1,325.5 =$   
**\$14,450.50.**

**Edmund Turner**

**Deputy Registrar**

**4<sup>th</sup> May 2022**