COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
2011/CLE/gen/00645
COMMON LAW & EQUITY DIVISION

BETWEEN
JOSEPH MCCOY

Plaintiff

AND
DREXEL WILLIAMS

First Defendant

AND
INDY HUNTER

Second Defendant

AND BETWEEN

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
2010/CLE/gen/00453

COMMON LAW & EQUITY DIVISION
BETWEEN

ELLERY CLARKE

Plaintiff

AND
DREXEL WILLIAMS

First Defendant

AND
INDY HUNTER

Second Defendant

Before Hon. Mr. Justice Ian R. Winder, Actg

Appearances Edward Turner for the Plaintiffs
Raynard Ribgy and Lillian Russell for the Defendants

4 November 2013, 15, 31 January 2014 and 13 February 2014

JUDGMENT

Winder Actg J.

These are assessment of damages claims arising from a motor vehicular accident which occurred on December 28, 2009 at Carmichael Road, New Providence.

1. The actions have been consolidated. The plaintiffs, Joseph McCoy ("McCoy") and Ellery Clarke ("Clarke") were the driver and passenger respectively in the same vehicle which was struck by the first defendant's motor vehicle which was at the time driven by the second defendant.

2. The defendants admitted liability at the case management conference and the matter was thereafter set down for assessment.

3. McCoy's statement of claim at paragraph 5. pleads the following injury and loss:

> **5. By reason of the matters aforesaid the Plaintiff has suffered personal injury and loss and damage.**
>
> **PARTICULARS OF INJURIES**
>
> **The plaintiff who is 56 years of age was initially presented to the Neurology Clinic at Doctors Hospital and suffered the following:**
>
> **(a) Bulging discs: one at cervical C3/C4 with narrowing of both neural foramina (left greater than right) and compromise on the left C4 nerve root. Also at C6/C7, there is a bulging disc with prominent foraminal component on both sides (worse on the left). There is also a bilateral joint hypertrophy. There is a compromise of both forminal with resulting compromise of both C7 nerve roots.**
>
> **(b) Circumferential bulging disc at L4/L% with moderate bilateral hypertrophic cell atropathy, bilateral neuroforaminal compromise with significant bilateral both transversing L5 nerve roots. At L5/S1 there is a prominent circumferential disc bulge with hypertrophic sent joint atropathy with narrowing of both neurformina.**
>
> **PARTICULARS OF SPECIAL DAMAGE**
>
> **a) Dr. Clyde Munnings $ 350.00**

b)	Dr. Ren Xun	$ 222.00
c)	Physical Therapist	$3,800.00
d)	Travel Expenses	$ 404.50
e)	The community pharmacy	$6,223.38
f)	Elite Imaging	$2,100.00

4. Clarke's statement claim at paragraph 5. pleads the following injury and loss:

5. By reason of the matters aforesaid the Plaintiff has suffered personal injury and loss and damage.

PARTICULARS OF INJURIES

The plaintiff who is 47 years of age was initially presented to the Neurology Clinic at Doctors Hospital and suffered the following:

a) Closed head injury with cerebral concussion and post concussive syndrome with posttraumatic headaches and migraine.

b) Cervical strain, secondary to acute whiplash injury with cervical radiculopathy, myelopathy and acquired spinal stenosis with C4, 5 herniated disc to the left and posterior displacement of the spinal cord an herniated disc at C6, 7 bilaterally with neuroforminal encroachment and bilateral nerve root compression of the C7 nerve.

c) Low back pain syndrome secondary to lumbosacral strain/sprain with lumbosacaral radiculopathy and multilevel facet joint hypertrophy and bulging discs at L5, S1 with bilateral nerve root encroachment.

PARTICULARS OF SPECIAL DAMAGE

a)	Dr. Clyde Munnings	$1,502.00
b)	Physical Therapist	$ 4,707.00
c)	Travel Expenses	$ 404.50
d)	The community pharmacy	$ 353.50
e)	Elite Imaging	$ 280.00
		$7,247.00

5. Each plaintiff gave evidence in their case along with Dr. Clyde Munnings, who attended to both plaintiffs. McCoy also called his son Harcourt McCoy and friend Arnold Bain in support of his case.

6. The Defendants called Dr. David Barnett in support of their case.

The case for Clarke

General Damages, Pain and Suffering Loss of Amenities

7. As a result of the accident Ellery Clarke suffered an injury to her face, neck and lower back. She complained of headaches, swelling to the face, back pain and stiffness. She was diagnosed with a closed head injury, cerebral concussion with post traumatic acute lumbosacaral strain/sprain and acute strain/sprain whiplash.

8. Dr. Ekedede, the defendants independent physician, stated that Clarke suffered a mild type head injury but with respect to the back injury stated:
   a) Clarke had a mild type head injury;
   b) Clarke had pre-existing lumbar disc disease however the accident may have aggravated the symptoms; and
   c) There was disc pathology (herniation) with respect to Clarke's cervical spine at the C4-C5 level which was caused by the accident.

PSLA

9. The Judicial College Guidelines suggest that moderate injury to the cervical spine range from £9,200 to £28,500 depending on the severity. Today's value is approximately B$15,150 to B$47,000. Clarke claims a sum of $44,000 whilst the defendants argue for a lower sum of $25,000.

10. In ***Gibson v. Public Health Authority*** **5 BHS J 298**, the plaintiff a female nurse aged 47 sustained an industrial accident which resulted in neck and back injuries and well as a closed head injury with associated headaches and vertigo. Whilst the plaintiff in this case was similar in age to Clarke, she seemed to have sustained a more serious injury as the doctors there assessed the plaintiff with 35% disability. Gray-Evans J awarded the plaintiff $55,000 for pain and sufferings and loss of amenities. In ***Johnson v. Mackey et al*** **2009/CLE/gen/678** the plaintiff there sustained back and neck injuries and could not stand for long periods. The plaintiff however was much older,

being aged 72 at the date of the award. Barnett CJ awarded the plaintiff $25,000 for pain and sufferings and loss of amenities was hit by a truck. I find that Clarke's injuries whilst not as serious as Gibson's injury was a bit more severe than Johnson and should warrant an award of $32,000.

Future Surgery

11. The defendants argue that as Clarke may require surgery in the future, if the physiotherapy failed only a percentage of the cost of future care should be awarded. The defendants proposed a reduction of 50%. The Defendants relied on ***Shutt v. Island Construction Co.*** **[1997] BHS J. No.104** and the following extract from **Kemp & Kemp**:

> **"Difficulties may arise, however, where the effect of the medical evidence is that there is a *chance* that the claimant will require future medical treatment at some time in the future ... In such cases, it is suggested that the correct approach is first to ascertain (at present day value) the cost to the claimant of such an operation. That cost needs to be discounted twice, first to take account of the chance that the operation will not be required, and secondly to take account of the accelerated receipt. Thus if the medical evidence is to the effect that there is a 75 per cent chance that the claimant will require the operation in 10 years' time, and that the present cost of the operation is £10,000, then the sum to be awarded would be £5,859, namely £7,500 (£10,000 x 75%) x 0.7812, the appropriate discount for an acceleration of 10 years at a discount rate of 2.5 per cent. It is more difficult when the medical evidence gives a range, or uses the expression "within 10 years". In such circumstances, practitioners are advised to ask the medical expert to be more precise so that the necessary evidence is available in order to allow the calculation to be made. Failing that, a more rough and ready method of assessment may be required..."**

12. In ***Shutt v. Island Construction Co.*** **[1997] BHS J. No.104** Sawyer CJ discounted the cost for future hip replacement from $80,000.00 and awarded the sum of $40,000.00 on the premises that "***the sums awarded are being paid now in a lump sum and if properly invested could generate sufficient to meet the medical costs in 10 years' time***".

13. Clarke argues that physiotherapy has failed. She was prescribed with an initial 15 sessions which she completed and later another 15-18 which she completed without relief. Dr. Munnings confirmed in his 14 March 2011 report that physiotherapy has in fact failed.

14. In the circumstances of Clarke's case, I would factor a 70% chance of Clarke requiring surgery to her cervical spine at C4-C5 level as proposed by Dr. Ekedede. Dr. Munnings estimates that the cost of the surgery can range up to $50,000. I therefore award the sum of $35,000, being 70% of the $50,000 cost of the surgery to her cervical spine.

Clarke's Special Damages

15. As stated earlier special damages must be pleaded and proven in order for the Court to award special damages. The only items of special damages pleaded by Clarke are the following:

(a) Dr. Clyde Munnings	$1,502.00
(b) Physical Therapist	$4,707.00
(c) Travel Expenses	$ 404.50
(d) The community pharmacy	$ 353.50
(e) Elite Imaging	$ 280.00

16. Evidence to support only the following amounts however, were proven:

(a) Dr. Munnings	$1,042.00
(b) Physical Therapist	$ 90.00
(c) Travel Expenses	$ 628.80
(d) Community Pharmacy	$ 353.00
(e) Elite Imaging	$ 280.00
	$2,393.80

17. Clarke stated in her evidence that she continues to be employed with BTC in the same capacity as she had been prior to the accident. She gave oral evidence of time off from work but no documentary evidence was provided to support such a claim. I am therefore unable to make any award in her favor under this head.

Summary of Award for Clarke

18. For the avoidance of doubt, I summarize the awards to Clarke in respect of Special Damages and General Damages:

a)	Special Damages	$ 2,393.80
b)	Future Surgery	$35,000.00
c)	PSLA	$32,000.00

$69,393.80

The case for McCoy:

General Damages, Pain and Suffering Loss of Amenities

19. McCoy's son, Harcourt, gave evidence to support McCoy's claim. His evidence was that following his father's accident in December 2009 he (Harcourt) began to worked more closely with him in his business. He said that he agreed to pay his father $700 per month for the use of the bus. Prior to this accident his father worked from time to time as a bus driver. Arnold Bain's evidence was advanced to support McCoy's claim to have engaged in a game of pick-up basketball from time to time prior to the injury.

20. McCoy's claim is complicated by his extensive history of prior injury/damage to his back. McCoy's prior injuries are summarized as follows:-

a) McCoy has had degenerative disease in the lumbar, cervical and thoracic spine since 1990. (per findings of Dr. Virgin and Dr. de Souza);

b) In March 2000 McCoy was diagnosed with degeneration and lumbar disc syndrome;

c) A similar finding was made in October 2002 that McCoy had degeneration in his lumbar sacral spine;

d) In June 2003 McCoy had pain radiating both lower limbs, was losing feelings at times in his legs and lower back was severely painful; and

e) On November 16, 2007, McCoy was involved in an accident with Ruel Carrol and Caribbean Recycling & Trading Limited. In respect of that accident, Dr. Abubakar reported and concluded that McCoy "developed

traumatic bulging disc in the neck and lower back causing radiating pain occasionally causing difficulty walking.... [He] continues to experience persistent pain syndrome...

21. Following litigation commenced by McCoy in the Supreme Court, he settled the action (arising from the November 2007 accident) in the amount of $262,000 in February 2010. The prognosis for McCoy's treatment of the injuries arising out of the 2007 accident called for McCoy to have a surgical procedure to his back. As a part of that settlement, McCoy was paid to undergo the surgery. He has not done so. The evidence reveals that the same surgery (which remained pending following the 2007 accident) is what is required to resolve his back issues, including any new injuries which may have arisen from the accident of December 2009.

22. McCoy asserts that the accident of December 2009, which is the subject of this action, resulted in new injuries to the cervical spine. Dr. Munnings supported this contention in his evidence. The defendants, on the other hand, assert that there was no new injury resulting from the December 2009 traffic accident. In support of this contention the evidence of Dr. David Barnett, orthopedic surgeon, was proffered.

23. The law on pre-existing injuries provides that in considering the damages that should flow to McCoy following the December 2009 accident the Court must have regard to the general principles which provide that while a tortfeasor must take his victim as he finds him he is not liable for any injury that was *not caused* by the accident. Guidance on this principle is set out in the case of ***Cutler v. Vauxhall Motors Ltd.*** [1970] 2 All ER 56.

24. The principle in Cutler was restated by Sir Denys Williams in ***Brewster v. Davis*** (1992) 42 WIR 59 where it was said:

The editors of *Salmond & Heuston on the Law of Torts* (19 Edn) page 613 state the 'egg-shell skull' rule as the seventh exception to the principle of *The Wagon Mound* [1961] 1 All ER 404 that reasonable foreseeability is the test of remoteness:

'This seventh exception, to the effect that the amount of damage need not be foreseen, is illustrated by the well-established rule that, at least so far as the physical condition of the victim is concerned, abnormal circumstances existing at the time of the wrongful act do not negative causal connection. So if the consequence of a slight personal injury are aggravated by the state of health of the person injured, the wrongdoer is nonetheless liable to the full extent, though he had no knowledge of that state of health and no reason to suspect it. So in the leading case of *Smith v Leech Brain & Co Ltd* [1962] 2 QB 405 it was held that if a victim of a negligent act suffers from a pre-cancerous condition which is activated by that act, the wrongdoer is responsible for all the disastrous consequences. This is always known as the "egg-shell skull" rule, although there appears to be only one case in which the plaintiff suffered from this peculiar disability. After a period of uncertainty it has now been held in England, Scotland, Ireland, New Zealand and Canada that *The Wagon Mound* did not affect the "egg-shell skull" rule.'

In this case the plaintiff's kidneys were malfunctioning on the date of the accident on account of the inflammatory response to SLE and the stress exacerbated her condition producing acute renal failure. I hold that the 'egg-shell skull' rule is still part of the law of Barbados and for the purposes of that rule there is in my judgment no difference between inflamed kidneys and a thin skull, a bad heart or a pre-cancerous condition. Accordingly, I hold that a causal link has been established between the defendant's negligence and the plaintiff's acute renal failure.

Mr Baker's evidence is that on a balance of probabilities the lupus would have developed in any event; that the accident was irrelevant because the plaintiff was destined for the serious illness that followed. On this evidence Mr. Alleyne submits that the plaintiff should not be awarded any damages at all or, at least, damage should be apportioned. He relies on *Cutler v Vauxhall Motors Ltd* [1970] 2 All ER 56 for his submission that there should be no award.

In that case the plaintiff grazed his right ankle in November 1965 by reason of his employer's negligence. In May 1966 he was found to have a varicose condition of both legs which must have existed before November 1965 and an

ulcer at the site of the graze. The ulcer necessitated an operation to strip the veins of the right leg and it was decided to treat the left leg similarly. This operation was performed in 1966 and after it the plaintiff was off work for a while and then on light work only for a time which caused him £173 net loss of wages. If he had not grazed his ankle, a similar operation, with similar consequences would have been necessary in 1970 or 1971. In an action by the plaintiff against his employers for damages in negligence, Donaldson J awarded £10 damages for the graze and the consequent discomfort, but refused to award damages in respect of the £173 loss and the discomfort of undergoing the operation. The decision was upheld by the Court of Appeal on the ground that, although the loss had already been sustained at the date of the trial, future probabilities were to be taken into account in determining whether the plaintiff was entitled to recover in respect of the loss and there was no reasonable probability that, even if the plaintiff had not suffered the graze, he would have avoided having to undergo an operation similar to that which he had in fact undergone, at a cost at least equivalent to £173. Karminski LJ said that the varicose condition was in existence before the accident and I would have required surgical treatment in any event in the foreseeable future. The accident merely advanced the date of the operation.

25. It is not disputed that McCoy had preexisting degenerative disc disease which required surgical operation prior to the December 2009 accident. The medical evidence does not suggest that the December 2009 accident either accelerated the need for surgery or made it more prominent (or urgent) or that his degeneration was impacted by the December 2009 accident.

26. As McCoy cannot seek to profit from the tort, allowances must be made and taken into account for the expenses that he would have naturally incurred arising from the previous accidents and the degenerative disc disease. Further guidance is found in the case of **Salih & Anr. v. Enfield Health Authority [1991] 3 All ER 400**, per Slade LJ

> **The object of the court in awarding damages in tort for pecuniary loss is so far as possible to restore the victim to the same overall financial position as that in which he would have found himself if the tort had never been committed. However great its sympathy with the plaintiff, it is not entitled to give him an adventitious profit. While no authority which has been cited to us is closely parallel to the present case, the closest is perhaps the decision of this court in *Cutler v Vauxhall Motors***

Ltd [1970] 2 All ER 56, [1971] 1 QB 418. Butler-Sloss LJ has already summarised the facts of that case, in which the majority decided that the court was entitled to advert to future probabilities, when considering whether the plaintiff was entitled to recover an item of financial loss (£173) which, as at the date of the trial, he had suffered as a result of the defendants' negligence, and that it would not be right to recoup him for this head of expense since in all probability he would at some subsequent date have had to bear it in any event.

Similarly in the present case, if the defendants' negligence had not occurred, the plaintiffs would on the balance of probabilities have had to incur the basic cost of maintaining at least one further child in any event. They are being compensated under a separate head in respect of the additional expense they have suffered and will suffer by reason of Ali's being born disabled. In my judgment the court is not entitled to have regard to this disablement in deciding what financial award (if any) should be made to them in respect of the basic cost of Ali's maintenance. It might have happened that, notwithstanding his mother's contact with rubella infection and the defendants' faulty advice, Ali was born a normally healthy baby. If that had happened, though the plaintiffs would not doubt still have had a claim for nominal damages against the defendants, I think that, in view of their stated previous wish and intention to have two more children, it could not have been right for the court to make any award in their favour in respect of the basic cost of Ali's maintenance. To do so would have left them with a profit. I can see no sufficient justification for making an award under this head merely because, in the event, he was born handicapped.

27. The purpose for PSLA is "as nearly as possible to get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation" (as per Blackburn LJ in ***Livingstone vs. Rawyards Coal Co.*** (1880) 5 Appeal Case 25).

28. I accept the findings of Dr Munnings, who saw the patient contemporaneously with the injury, that in fact new injuries occurred as a result of the December 2009 injury. I find however that these new injuries were relatively minor in comparison to McCoy's existing injuries. This is so because:-

    a) The medicine prescribed for the plaintiff remained unchanged following the accident;
    b) Dr. Barnett's report on McCoy's condition saw no significant changes;
    c) The same surgery will correct both the pre-existing and "new" injury which emerged as the surgery will repair damage to the same location in McCoy's back;

d) Dr. Barnett notes that the degeneration is an on-going process which worsens over a period, whether an accident occurred or not, and that the degeneration in McCoys' back was existing for *"greater than 20 years".*

e) In the report of Dr. Charles Rahming dated 11th March, 2009 and based on his examination which was conducted on 3rd February, 2009 Dr. Rahming stated that McCoy " *was found to have a right C5, C6, and C8 Radiculopathy and a right L4, L5 Radiculopathy...*". Dr. Rahming concludes that *"Mr. McCoy is likely to suffer from symptoms arising from cervical and lumbar sacral Radiculopathy for many years to come if not for the rest of his life...".* Dr. Rahming's findings came some 9 months prior to the accident and is the most current in relation to the December 2009 accident.

f) Dr. Munnings report dated 17th October, 2008 notes that *"Due to fact that it is now ten months and three weeks beyond the date of the accident [November, 2007], and Mr. McCoy continues to have significant symptoms and signs from the injury sustained, it would be safe at this point to say that the injuries would persist up to another thirteen to fourteen months or so...There is hope that with continued treatment, therapy and now possibly surgery on his neck and lower back, Mr. McCoy would be able to return to gainful employment after the 24 month period, but it would take another evaluation, after that 24 month period, in order to declare any permanency to his current disabilities."* It is therefore difficult to conclude that McCoy was improving prior to December, 2009, which was within the 24 months following Dr. Munnings examination on 17th September, 2008. Additionally there is no physiotherapy report of Rhoda Hanna prior to the December 2009 accident which suggests that McCoy was improving.

g) The findings of the attending physician at the A& E, Dr. Garraway, in her report dated 30th December, 2009 indicates that *"Significant*

examination findings were mild tenderness of the lower back (L3/L4) with no neurological deficit.".

29. Having regard to the state of the medical evidence I reject the evidence of the witnesses for McCoy who suggest that he engaged in the levels of physical activity asserted by them, prior to the accident of December 2009.

30. I find that in the circumstances the new injury sustained by McCoy should, according to the Judicial College Board, fall within the upper end of the minor injuries range for back injuries. It should therefore be compensated in an award of damages in the amount to $11,000.

Special Damages

31. Special damages must be pleaded and proven in order for the Court to award special damages. In ***Russell v. Simms et al*** 2008/CLE/gen/00440 Barnett CJ stated:

> "[A] person who alleges special damage must prove the same. It is not in general sufficient for him merely to plead special damage and thereafter recite in oath the same facts, or give evidence in an affidavit without any supporting credible evidence, and sit back expecting the tribunal of fact to accept his evidence as true in its entirety, merely because the aforesaid evidence is not controverted, even though the particular damage in the sense of a loss having been incurred appears reasonably improbably and or the money value attributed to the said loss or damage appears unlikely and or unreasonable viewed in the context of the susceptibility of human beings in general to overestimate and exaggerate loss, damage and suffering without any intention whatsoever of being deliberately honest..'

32. The only items of special damages pleaded by McCoy are the following:

a) Dr. Clyde Munnings	$ 350.00
b) Dr. Ren Xun	$ 222.00

c) Physical Therapist $3,800.00

d) Travel Expenses $ 404.50

e) The community pharmacy $6,223.38

f) Elite Imaging $2,100.00

The Community Pharmacy – Prescriptions

33. As indicated earlier in this ruling there has been no evidence that the plaintiff's medication changed as a result of the December accident. The receipts produced, which do not amount to the $6,223.38 alleged, detail medication received by the plaintiff prior to the accident and which were identical in dosage and cost to medication received by the McCoy after the accident. A review of the medication would reveal that:

    a) McCoy was taking the same medication prior to the December 2009 accident;

    b) the medications are not all related to pain or pain relief;

    c) no evidence was adduced to show or establish that any of the medications were either prescribed or needed following the December 2009 accident; and

    d) there was no factual nexus between the prescription and cost of the prescription and any injuries sustained by McCoy arising from the December 2009 accident.

34. It would seem that this medication would have been required for his continued treatment and care in respect of his prior injuries and degenerative disc disease. McCoy therefore would have incurred these expenses even if he had not been involved in the December, 2009 accident.

35. As I have found that McCoy did in fact sustain a new injury albeit minor in comparison to his existing problems, I ought nonetheless to award a proportion of the amounts claimed for medication. In the premises I award a sum of $500.00 under this head.

36. McCoy asserts a claim for an invoice for Dr. Patterson in the sum of $27,798.00. Notwithstanding there is no pleading in relation to such a loss, there was no evidence adduced to support that this related to the December 2009 accident.

Physical Therapy

37. McCoy was being treated by the physiotherapist, Rhoda Hanna arising from the injuries sustained in the November 2007 accident. There is real no evidence that McCoy completed physiotherapy prior to the December 2009 accident. On 4th January, 2010 a letter written by Rhoda E. Hanna and addressed to Miriam J. Curling & Co. proposed a plan of physical therapy for McCoy to begin/continue following his November 2007 accident. It is therefore not likely to have been related to the December 2009 accident as:

    a) the plan is dated the same date that McCoy went to Dr. Minnings for the first time after the December 2009 accident; and
    b) Dr. Munnings' letter dated 17th June 2010 indicates that he referred McCoy to Rhoda Hanna after meeting with him on 25th January, 2010.

38. A bill for Rhoda Hanna for $3,500 has been rendered and admitted into evidence. As I have found that McCoy did in fact sustain a new injury albeit minor in comparison to his existing problems, I ought to award a proportion of the amounts claimed for physiotherapy. In the premises I award a sum of **$1,166.67** being one-third of the sum billed of $3,500.00 with only half being attributed to the December 2009 accident, based on McCoy's pre-existing degenerative disc disease, which necessitated his continuing therapy.

Travel expenses

39. There is no evidence as regards travel expenses, the claim is therefore rejected.

Elite Imaging

40. I find that it was reasonable for McCoy and his medical practitioners to engage MRI's and any diagnostic mechanisms available to determine the nature of his injuries. Invoices have been presented in the amount of $2,100. I therefore accept the expense of $2,100.

Dr. Munnings

41. I find that the sum of **$1,500** has been proven and should be paid to McCoy with respect to this head.

Bus Maintenance

42. No pleading is made in the Statement of Claim under this head. In any event, I reject the sum of $12,033.00 claimed in McCoy's witness statement and submissions as no evidence was adduced to enable me to assess such a claim.

Loss of Income

43. Notwithstanding the absence of pleadings, I am not satisfied that that the evidence adduced enables me to conclude that McCoy sustained any loss of income. The evidence indicated that McCoy sparingly operated the bus following the 2007 injury. There is no evidence of McCoy's income prior to the accident. Following the 2009 accident he mitigated his loss by permitting his son to operated the bus and make periodic payments to McCoy. This arrangement secured $700.00 per month to McCoy. It did not appear to me that this arrangement, having regard to McCoy's sporadic driving of the bus, caused any loss to McCoy.

Summary of Award for McCoy

44. For the avoidance of doubt, I summarize the awards to McCoy in respect of Special Damages and General Damages:

a)	Dr. Clyde Munnings	$ 1,500.00
b)	Rhoda Hanna	$ 1,666.67
c)	The Community Pharmacy	$ 500.00
d)	Elite Imaging	$ 2,100.00
e)	PSLA	$11,000.00
	Total	**$16,766.67**

Conclusion

45. Judgment is awarded to McCoy in the sum of $16,766.67. McCoy shall be entitled to interest at the rate of 5% from the date of the filing of the Writ to the date of judgment. Thereafter interest will accrue on the debt in accordance with the provisions of the Civil Procedure (Award of Interest) Act, 1992.

46. Judgment is awarded to Clarke in the sum of $69,393.80. Clarke shall be entitled to interest at the rate of 5% from the date of the filing of the Writ to the date of judgment. Thereafter interest will accrue on the debt in accordance with the provisions of the Civil Procedure (Award of Interest) Act, 1992.

47. I will hear counsel as to issue of costs.

Dated the 28th day of April 2014

Ian R. Winder

Actg. Judge