

**BARBADOS**

Suit No: 2273 of 2006

**IN THE HIGH COURT OF JUSTICE**

**CIVIL DIVISION**

**BETWEEN**

**DOMINIC HILL - PLAINTIFF**

**AND**

**MERVIN GODDARD - 1<sup>st</sup> DEFENDANT**  
**PANDEEP INTERNATIONAL LTD - 2<sup>nd</sup> DEFENDANT**

**Before The Honourable Madam Justice Maureen Crane-Scott, Q.C.,  
Judge of the High Court(ag)**

**2007: September 24, 27; October 30**

**Mr. Gregory Nicholls for the Plaintiff**  
**Miss. Natalie Sandiford for the Defendant**

**DECISION**

[1] **Crane-Scott J:** In this action, Dominic Hill (“the Plaintiff”) seeks to recover against the Defendants damages for personal injury, loss and damage sustained by him as a result of a motor vehicular collision

which took place on December 23, 2003 involving vehicles owned and/or operated by the Plaintiff and the Defendants.

- [2] The Defendants' liability for negligence having been settled by the entry of the default judgment on 5<sup>th</sup> February, 2007 against both Defendants, the matter was set down for hearing in accordance with Order 37 of the Rules of the Supreme Court for assessment of the Plaintiff's damages.
- [3] On July 27, 2007, the interlocutory judgment against the First Defendant was set aside by Blackman J for irregularity and the Plaintiff was ordered to effect service on the First Defendant by 3.00 pm on August 10, 2007.
- [4] When the matter next came on for hearing on September 24, 2007, Counsel for both parties were in general agreement that as there was now no judgment against the First Defendant, the Court should proceed with the assessment of damages on the basis of the default judgment which had been obtained against the Second Defendant as the owner of the vehicle which had been involved in the collision.

**The Plaintiff's Oral Evidence:**

- [5] The Plaintiff was duly sworn and gave evidence in support of his claim in paragraph 4 of the Statement of Claim that on December 23, 2003 while driving his Suzuki jeep MA-6302 along the ABC Highway proceeding in the direction towards Warrens from Hothersal, a rear end collision occurred. This was while his vehicle was stopped in a line of traffic on the approach to the Warrens roundabout.
- [6] The Plaintiff's pregnant wife was sitting beside him to his left in the front passenger seat. Upon feeling the first rear end impact to his

- vehicle, he put his left arm protectively across his wife's chest, only to feel a second impact to the rear of his vehicle. On alighting from his vehicle, the Plaintiff observed that the rear impact to his vehicle had been caused by a Suzuki Econovan bearing registration number G-1535. The vehicle was owned by the Second Defendant and was driven by the First Defendant.
- [7] After checking on his wife's condition, the Plaintiff assisted the First Defendant out of the van and called the police. A passing policeman on a police motorcycle stopped and inquired as to their condition. On being told that the Plaintiff was feeling pain in his back and neck and that his wife was also experiencing pain, the policeman suggested that the Plaintiff and his wife should seek immediate medical attention at the FMH clinic.
- [8] The Plaintiff gave oral testimony regarding his injuries, pain and suffering and physical disability following the accident. He also described the effect which the accident had had on his amateur hockey activities at the national, international and club levels. According to the Plaintiff, he has been a hockey player for twenty-two years and had been playing hockey since he was ten years. He has been representing Barbados in hockey at both the junior and senior levels since the age of sixteen.
- [9] At the time the accident occurred, the Barbados Senior National Hockey team, which he captained, was in preparation for the Central American and Caribbean Games. The team had recently participated in the Pan American Games in Santo Domingo in the summer of 2003.

- [10] The Plaintiff stated that following the accident, in the initial stages, he experienced considerable pain in his neck. The lower back itself was where his major problem was. Standing was also a problem and he would have to pull his legs up to his chest in the mornings to relieve the pressure off his back. According to the Plaintiff's testimony, he suffered from constant pain moreso in his back than his neck.
- [11] The Plaintiff indicated that Dr. Harper had prescribed medication for him and advised him to seek therapy for his injuries. In the early part of 2004, he attended rehab at RehabWorks Physical Therapy Clinic in Belleville for several weeks. He also had some acupuncture done by the physiotherapist of the hockey team in an effort to relieve the pain.
- [12] By August 2004, the Plaintiff had still not returned to playing hockey and was unable to undertake other sporting activities. While his neck was still uncomfortable, he remained more concerned about his back injury. According to him the problem was in the lower back in a region just above his rear end. He recounted that Dr. Harper had explained to him that the two muscles at the back of the spine had been sprained and that this was what was causing the pain.
- [13] The Plaintiff informed the Court that he had undergone massage therapy and had also had an ultra-sound done. He had also been given exercises to do to stretch his back.
- [14] He also informed the Court that the annual domestic hockey season in Barbados starts in April and continues until the last week of August each year. The Banks Hockey Festival is an international tournament which attracts teams from other countries. The Festival is one of the highlights on the local calendar and local players and hockey

enthusiasts eagerly look forward to the event every year to play and watch hockey and generally socialize.

- [15] As a result of his injuries the Plaintiff had missed out on the entire domestic hockey season including the Banks Hockey Festival in 2004, and had also been unable to participate in any international tournaments overseas. According to the Plaintiff, he eventually resumed playing hockey sometime between the latter part of 2004 and early 2005.
- [16] Apart from his hockey activities at the national and international levels, the Plaintiff was also an active member of the “ABC hockey team” – a collection of old Combermere hockey playing schoolmates and the “Dollar Wine hockey team” which played hockey overseas. With the help of the Barbados Tourism Authority, the “Dollar Wine hockey team” also promoted Barbados overseas and sought to generate overseas interest in the annual Banks Hockey Festival here in Barbados.
- [17] The “Dollar Wine hockey team” had developed a sporting relationship with Seaford College in the United Kingdom where the team traveled to play hockey, and also participated in the Big Apple Hockey Festival which is held in New York every September. According to the Plaintiff, he was unable to play in the Big Apple Hockey Festival in 2004 due to his injuries. He recounted the fact that a number of players from the “Dollar Wine hockey team” had played in an Indoor Hockey Tournament in Guyana around November 2004 when he was still out of commission.
- [18] The Plaintiff recalled that as a direct result of the accident, he had (in addition to missing the CAC Games and the entire 2004 domestic

hockey season) also missed out on participating as a club player with the “Dollar Wine hockey team” in the following overseas events held in 2004, namely the New York Big Apple Hockey Festival, the Guyana Indoor Tournament as well as the Trinidad Pre-Season.

[19] The Plaintiff also testified as follows:

“At the time of the accident, I was at my peak and was unable to practice due to the injury. I lost my place in the national hockey team. I was not happy about this. Dr. Harper gave me time-lines as to when he thought I could return. These timelines were extended due to my condition. I was not fit to be considered for inclusion in the national team. It was a difficult pill to swallow. I do play hockey now, predominantly at Division I level, but not in the Premier League. I have been asked to help out at the Premier League.”

[20] He also stated:

“There are two medical reports from Dr. Harper. The reason for this is because following the first visit I still had pain in my lower back. He had to do another assessment. In the second series of consultations with Dr. Harper, he gave me more medication. He sent me for physiotherapy and gave me additional exercises. Currently, my neck is not painful but has an uncomfortable feeling. My back continues to be painful. The pain appears to be muscular. If I hold my daughter (who is two years old) for five minutes, I get pain in my back and have to rest her down. If I stand for five minutes, I have to rock from side to side, or walk around, bend forward or lean forward to stretch the muscles in the back. Those activities tend to relieve

the pain in the back. I do not still attend any medical practitioner in connection with my injuries. The only treatment which I receive is from the hockey team physiotherapist in preparation for warm-up matches.”

[21] During his cross-examination by Counsel for the Defendants, Miss. Nathalie Sandiford, the Plaintiff admitted that he had seen Dr. Harper in connection with unspecified sports injuries which he had received prior to those sustained in the accident. He also stated that following the accident, he had been able to alight from his vehicle unassisted and that it had not been necessary for an ambulance to take him to the FMH Emergency Clinic.

[22] The Plaintiff also admitted that even though he had been given two week’s sick leave by Dr. Harper on December 27, 2003 and had been advised to return for review in two weeks, he had actually returned to work earlier than the date which the doctor had certified as sick leave. He also admitted that it was true that there were other reasons apart from the accident why he had been unable to participate in certain hockey events.

[23] On re-examination, the Plaintiff clarified that there were other reasons apart from the injury why he had been unable to participate in some hockey events since the accident. However, he observed that the reason why he could not play hockey between December 2003 and 2005 was solely because of the injuries sustained in the accident.

**The Medical Evidence:**

[24] The Plaintiff obtained three medical reports which were agreed and received in evidence as follows:-

1) FMH medical report by Dr. Wharton dated March 11, 2006;

2) Medical report by Dr.A. L. Harper dated December 26, 2005 detailing the Plaintiff's condition and treatment during seven medical consultations between December 27, 2003 and January 17, 2005;

3) Medical report by Dr. A. L. Harper dated August 27, 2006.

**(i)The FMH report:**

[25] According to the medical report of Dr. Michael Wharton dated March 11, 2006, the Plaintiff was examined at the FMH Emergency Clinic on December 23, 2003. He complained of pain in the region of the left side of his neck, left shoulder blade and lower back. The Plaintiff had no neurological symptoms and the examination revealed a tender left trapezius muscle with a full range of motion but with pain, and tender left rhomboid muscles. He was assessed to be suffering from muscular spasm of the neck and back. Analgesics and muscle relaxants were prescribed. In addition, ice pack applications were advised and the Plaintiff placed on sick leave until December 30, 2003.

[26] On being reviewed at the FMH Clinic on December 30, 2003 the Plaintiff was still having pain in his neck and back. Examination revealed tenderness of the left trapezius, as well as tenderness of the cervical paravertebral muscles and lumbar paravertebral tenderness. Warm compresses were advised and his sick leave extended until January 6, 2004. According to the report, the Plaintiff's initial pain was of moderate severity and a complete and uncomplicated recovery was anticipated within 4-6 weeks.

**(ii)Dr. Harper's report on 7 consultations between 2003 and 2005:**

[27] **Consultation I:** In addition to receiving treatment at the FMH Emergency Clinic, the Plaintiff was also examined by Dr. A

Llewellyn Harper, a sports physician attached to the Barbados Senior National Hockey Team which the Plaintiff captained. Dr. Harper examined the Plaintiff on seven occasions between December 27, 2003 and January 17, 2005.

The Plaintiff's first visit with Dr. Harper took place on December 27, 2003- 4 days after the accident. According to the report, he had presented with persistent lower back and cervical spine pain, the latter being severe in intensity with radiation to the interscapular region of the back.

- [28] Though he gained relief when he used the medication prescribed, the pain was more severe on waking in the morning, specifically while lying flat or getting down from bed. He further complained that although he was ambulant he could move only slowly in order to avoid aggravation of pain and that lifting any weight, doing any exercise and attempting intercourse evoked greater pain.
- [29] Clinical examination had revealed a young man walking slowly into the office in pain and taking his seat gingerly. The neck was held straight looking ahead and the upper body was turned when he needed to turn the neck.
- [30] The trapezius muscle exhibited spasm, greater on the left, and moderate tenderness particularly at the root of the neck on the left side. There was only mild decreased range of motion of the cervical spine, occurring with pain at near end range and affecting left rotation, bilateral side flexion and cervical flexion to a lesser extent.
- [31] The Plaintiff's range of motion was reduced by pain, particularly abduction and adduction, with the adduction of the left shoulder being significantly reduced. There was also mild tenderness over the

thoracic spine to T5 and also tenderness of the adjacent paravertebral muscles, but there was no deficit of range of motion of the thoracic spine.

- [32] The lumbar paravertebral muscles exhibited moderate spasm, particularly those adjacent to the L3-L5 vertebrae, and these tight muscles were moderately tender on palpation. There was also moderately severe tenderness of the L3 and L5/S1 vertebrae with similar tenderness over the right L4/L5, L5/S1 facet joints. Flexion of the lower back was limited by pain over the abovementioned facets.
- [33] The Plaintiff was diagnosed as having suffered injury to the neck and lower back as a result of the motor vehicular accident, the whiplash mechanism of injury occasioning moderately severe soft tissue injury and significant pain and debility. Oral nonsteroidal anti-inflammatory medication and skeletal muscle relaxants were prescribed as well as topical treatments were recommended for relief of the pain and muscle spasm. Rest from aggravating activities was strongly advised and the Plaintiff was granted certified medical leave from work.
- [34] **Consultation II:** The Plaintiff's second consultation with Dr. Harper took place on January 15, 2004. When examined, the Plaintiff indicated that the neck and upper back pain and stiffness had significantly improved and that there was only "rarely" stiffness and a "pressure" on the neck. His lower back pain had, however, intensified and was aggravated by prolonged sitting (as at a desk) when he returned to work, and by initiation of movement after extended periods of inactivity.

- [35] The Plaintiff also complained that later in the day after activity, the muscles along the lower spine hurt. He felt little pain on waking in the morning.
- [36] Clinical examination revealed improvement in the palpation induced tenderness of the neck, the trapezius muscles and the thoracic paravertebrals, but there was still much palpable tightness of the trapezius bilaterally. Tenderness of the lumbosacral spine and lumbar paravetebral muscles persisted, as did the accompanying muscle spasm. The Plaintiff's overall range of movement had improved but the pain-free movement of the lumbar spine had not returned. Flexion was still significantly impaired.
- [37] Oral skeletal muscle relaxants and topical therapy were continued and a programme of physical therapy was continued. The Plaintiff was again advised to refrain from activity that would aggravate the pain and to attend for review after two weeks of therapy. Certified medical leave from work was also offered for an extended period.
- [38] **Consultation III:** At the Plaintiff's third consultation with Dr. Harper on March 10, 2004, the Plaintiff indicated that the programme of physical therapy had yielded good results and that he had felt generally much better. He complained however that standing for periods of more than 10 minutes and undertaking the prescribed rehab exercises resulted in moderate back pain. He had been able to return to work without significant pain two weeks after the last consultation of January 15, 2004 but had not resumed exercise or training. His primary concern was that the ongoing pain might indicate persistence of a serious injury that would be aggravated by resuming strenuous exercise.

- [39] Physical examination revealed no new findings of any significance. A report of the physical therapist dated two days prior to the third consultation with Dr. Harper recommended a home and practice programme of flexibility and resistance exercises scheduled to return him to fitness and resumption of full sporting activity by May 2004-two months hence.
- [40] Oral steroid medication and non-steroidal anti-inflammatories were prescribed for a short period and the Plaintiff was scheduled for a follow-up appointment in one week.
- [41] **Consultation IV:** When the Plaintiff presented for his fourth consultation on March 18, 2004, there was no complaint of back pain, but for the first time in months there was mild to moderate pain with prolonged reading, as with sitting at a desk/reading, for periods of more than 10-15 minutes. The pain would become more severe the longer the session lasted. The new pain was assessed as arising from weakened, deconditioned postural muscles that had been brought into play in the recent past as the pain and discomfort of the other injuries had resolved, allowing a greater range of activities.
- [42] No new medication or treatment was prescribed and the Plaintiff was advised to rehabilitate the neck muscles gradually to the point where he could hold a position for prolonged periods without pain. He was discharged from care and advised to return for follow-up on as necessary basis.
- [43] **Consultations V and VI:** The Plaintiff was seen by Dr. Harper on two occasions in May and October 2004 respectively. He complained of lower back pain which had never completely resolved. The pain

- was severe enough when experienced to affect his work and exercise/training.
- [44] At his fifth consultation with Dr. Harper in May 2004, the Plaintiff presented with low back pain that was eased only by his bending forward or getting off his feet. Having completed the course of physical therapy, he attended acupuncture sessions with limited success. Clinically there was reduced flexibility of the hamstring muscles on both sides as well as of muscles of the hip girdle, with internal and external rotation being most affected. Specific flexibility exercises were prescribed.
- [45] The Plaintiff's sixth consultation with Dr. Harper took place in mid-October 2004. He complained that strenuous activity and prolonged standing provoked soreness and moderate pain of the lower back. Raising the legs helped to alleviate the pain. He also complained that there had been infrequent episodes of sudden lower back spasm that caused severe back pain. These episodes were transient in nature and resolved quickly without treatment.
- [46] Oral analgesics and muscle relaxants were again prescribed and a decision was taken to investigate the lower back radiographically. X-ray and then MRI investigations revealed no abnormalities save for mild sacroiliac joint osteoarthritis on X-ray.
- [47] As the pain had subsided with the use of the medication and there was no objective abnormality, the Plaintiff was again reassured and advised to continue his now strenuous rehabilitation as he had returned to hockey training.
- [48] **Consultation VII:** The Plaintiff consulted Dr. Harper again on January 17, 2005 regarding his injuries. He reported that he had been

fully active without being restricted by pain. He complained that he occasionally experienced neck pain but that he could live with it. The exercises that he had previously employed for the neck would usually be enough to bring about pain relief. He was discharged from follow-up.

[49] Following the seven consultations between December 2003 and January 2005, Dr. Harper's conclusion and prognosis regarding the Plaintiff's condition was as follows:

“As a result of the accident he experienced severe debilitating neck, upper and lower pain, significant enough to require his absence from work for at least four weeks and from his high-level sport for several months. The injuries sustained were whiplash in nature with chronic soft tissue complications and associated with recurrent pain and debility when activity became strenuous or prolonged. There was no complete resolution of symptoms...but Mr. Hill was functioning normally. Prognosis for complete resolution of the symptoms of these injuries is guarded and there might be painful or debilitating symptoms in the future. Alternatively with the progress of time and continuing strengthening and flexibility exercises he might realize complete recovery from painful symptoms.”

**(iii) Dr. Harper's second report - 2006 review:**

[50] According to a second medical report prepared by Dr. Harper and dated August 27, 2006, the Plaintiff was again reviewed on May 26, 2006 when he complained of recurrences of low back pain which had begun six to eight weeks prior to the consultation and which had become more severe. This pain was said to be present with or without activity and there was no radiation. The Plaintiff had also complained

of having to be massaged before each game to prevent severe pain and lumbar muscle tightness during and after the game. He also complained of generalized low back stiffness even with normal activity at times, including driving and emerging from the shower. The pain was becoming more frequent in occurrence and more intense.

[51] Following a clinical examination, the Plaintiff was found to be suffering from tenderness of the L4/L5 vertebral bodies and facet joints and lumbar paravertebral muscle spasm. He was also found to have pain in the lower back with LS spine extension and full right hip adduction. He was experiencing pain with pelvic rotation when prone and there was moderate tightness of the right hamstring muscles.

[52] Mr. Hill was started on oral medication for relief of pain and muscle spasm and was advised to restart a physical therapy programme aimed at improving lumbar and hamstring flexibility and stabilizing the core muscles. He was advised to refrain from aggravating activity as much as he could and to have timely follow-up if the symptoms persisted or recurred.

[53] In the absence of other obvious aggravating injury or cause, Dr. Harper concluded that the Plaintiff's symptoms were "a flare-up" of the previous injury described in his previous substantive medical report.

**The Plaintiff's Submissions on Damages:**

[54] Pursuant to the Order on the Summons for Directions filed on March 16, 2007, Counsel for the Plaintiff filed full Particulars of the Plaintiff's claim for damages on July 25, 2007.

[55] At the hearing, Counsel for the Plaintiff submitted that the Plaintiff was claiming an award of general damages of \$35,000.00 for the Plaintiff's personal injuries. Mr. Nicholls indicated that the Plaintiff's claim was made under four of the five categories discussed in the case of **Cornilliac v. St. Louis (1965) 7 WIR 491**. He then made submissions relative to each of the four categories as follows:

[56] (i) Nature and extent of the Plaintiff's injuries: Mr. Nicholls quoted extensively from the three medical reports discussed between paragraphs [24] and [53] above. He drew the Court's attention in particular to what he described as Dr. Wharton's guarded prognosis in December 2003 to the effect that the Plaintiff's initial pain was of "moderate severity". He characterized the prognosis of a complete and uncomplicated recovery within 4-6 weeks as having been made on the basis of the doctor's clinical experience. He noted that the doctor had also declined to make any definitive comment on the Plaintiff's progress or the eventual outcome of the case in the absence of follow-up.

[57] Turning to the medical assessment of the Plaintiff's condition following his first consultation with Dr. Harper on December 27, 2003, Mr. Nicholls drew the Court's attention to the medical evidence to the effect that the Plaintiff had "suffered injury to his neck and back as a result of the motor vehicular accident, the whiplash mechanism occasioning moderately severe soft tissue injury and significant pain and debility".

[58] (ii) Nature and gravity of the resulting disability: Referring to each of the seven consultations between December, 2003 and January, 2005 discussed in Dr. Harper's first report, Mr. Nicholls directed the

Court's attention to the question of how the Plaintiff had coped with the injuries sustained. He made reference to the initial clinical findings at the first consultation and pointed out that while the Plaintiff's neck and upper back pain had significantly improved by the second consultation, the Plaintiff's lower back pain had intensified. He submitted that these findings were consistent with the Plaintiff's oral evidence that while his neck was still uncomfortable, he remained more concerned about his back injury.

[59] Mr. Nicholls pointed to the medical evidence of Dr. Harper that by the fourth consultation on March 18, 2004, the Plaintiff was diagnosed to be experiencing new mild to moderate pain arising from weakened, deconditioned postural muscles that had been brought into play as the Plaintiff's range of motion increased due to the decrease in pain and discomfort which had occurred as the initial injuries resolved.

[60] Counsel for the Plaintiff also drew the Court's attention to the low back pain which the Plaintiff was experiencing in May 2004 with prolonged standing and the soreness and moderate pain of the lower back which was experienced in mid-October (some ten months after the accident) which was provoked by strenuous activity and prolonged standing due to his having resumed hockey training.

[61] Mr. Nicholls pointed out that following the seventh consultation in January 2005, Dr. Harper had given a guarded prognosis for complete resolution of the Plaintiff's symptoms. He submitted that Dr. Harper's second report showed that the Plaintiff's smooth progress to recovery had not occurred. He highlighted the fact that Dr. Harper's second report showed that some two and a half years following the motor

vehicle accident, the Plaintiff had not fully recovered from the injuries and was still experiencing painful and debilitating symptoms.

[62] (iii) Pain and Suffering: Mr. Nicholls submitted that all three reports contained ample evidence of the Plaintiff's continuing pain and suffering throughout the entire period covered by the reports.

[63] (iv) Loss of amenities suffered by the Plaintiff: Counsel for the Plaintiff submitted that the Plaintiff was no ordinary Plaintiff. He submitted that although the Plaintiff was not a professional hockey player, he had nonetheless suffered a career ending injury or at least, an injury which had resulted in a setback to his amateur hockey career. He observed that prior to the injury the Plaintiff was the immediate past captain of the Barbados national senior hockey team. He was the team captain at the time of the accident, having recently returned from the Pan American Games. The Plaintiff was also in preparation for the Caribbean and Central American Games.

[64] Mr. Nicholls pointed out that hockey is a high intensity sport which calls for a great deal of skill. Mr. Hill had played hockey for over twenty years and had played hockey for his country at the highest level. He noted that the evidence established that as a result of the accident, the Plaintiff had missed every single international competition since.

[65] He observed that every year new players emerged and threw their hats in the ring for a place in the Premier League. Since the accident, Mr. Hill had only recently returned to the Premier League. According to Mr. Nicholls it would be difficult for the Plaintiff not having played at the top tier of competition to regain a place on the national team. He submitted that at the age of twenty-eight years, having enjoyed a

junior national career, having started a senior national career, Mr. Hill has had to leave all that behind him. He urged the Court to quantify the loss suffered by Mr. Hill under this head, noting that while the Plaintiff did not derive a living from the sport of hockey, the sport was one from which he derived considerable enjoyment and satisfaction.

[66] In support of his claim for damages for personal injuries of \$35,000.00, Mr. Nicholls cited the recommended ranges for minor back, neck and shoulder injuries respectively from the **Judicial Studies Board Guidelines for the Assessment of General Damages in Personal Injury Cases (7<sup>th</sup> Edition)**. He also cited the cases of **Duffy v. Warrick (2003)**, Kemp & Kemp, The Quantum of Damages, Volume 4 para. F5-035 PSLA: GBP£ 5,250 and **Standing v. Werrett (2000)**, Kemp & Kemp, The Quantum of Damages, Volume 4 para. F1-057. PSLA: GBP£ 5,000.

[67] Mr. Nicholls also indicated that the Plaintiff was also claiming the modest sum of \$500.00 for future medical care, the sum of \$2,000.00 for domestic assistance and special damages of \$2,647.95 being the cost of medicals reports, medical services, physiotherapy services and medication.

[68] In closing, Counsel for the Plaintiff urged the Court to take judicial notice of the increasing value of the pound sterling and to make its award using the current conversion rate of the pound sterling *vis-à-vis* the Barbados dollar. He submitted that it was open to the Court to adjust the exchange rate and urged the Court not to slavishly adhere to the customary exchange rate used of \$3.50 Barbados dollars to one English pound.

**The Defendant's Submissions on Damages:**

- [69] In her address, Counsel for the Defendant, indicated that the Defendant was not disputing that the Plaintiff suffered injuries as a result of the accident in December 23, 2003. She submitted that the Defendant was, rather, questioning the duration of the Plaintiff's pain and suffering and disability. She pointed out that by the time the Plaintiff had seen Dr. Harper for his second consultation on January 15, 2004 (some three weeks after the accident) he had reported that his neck and upper back pain had improved.
- [70] Miss. Sandiford cited the case of **Brown v. Woodall [1995] P.I.Q.R. 36** as legal authority for the Court treating a plaintiff's individual injuries as a composite whole as opposed to merely adding up the various figures thought to be appropriate to the various different injuries sustained by a plaintiff, which approach could give an aggregate which is larger than is reasonable.
- [71] In response to Mr. Nicholls' submission inviting the Court to use the current increased exchange rate in calculating the Barbados dollar amount of a United Kingdom award, Miss. Sandiford argued that there was no good reason for the Court to depart from the established practice of using an exchange rate of \$3.50 Barbados dollars to the English pound.
- [72] Miss. Sandiford also cited the case of **Khamassi v. Racjip (2000)** Kemp & Kemp Personal Injury Practice – para. E2-139 where an award of £3,000 (RPI adjusted to £3,366.07) had been awarded to a 32 year old claimant who had suffered whiplash injury to his neck and back and a mild head injury. She submitted that using an exchange rate of \$3.50 an award of Bds \$11,781.25 would be reasonable.

- [73] Counsel also referred to the case of **Dan v. Welch & Rodgers (1996)** Kemp & Kemp Personal Injury Practice – para. E2-122 where an award of £2,000 (RPI adjusted to £2,534.12) had been awarded to a claimant who had suffered soft tissue injury to the lumbar spine as a result of a rear impact in a motor vehicle accident. Some eighteen months post accident, the claimant had returned to his hobbies of light weight-lifting and sports with occasional minor aching. His back was also vulnerable to further trauma. Miss. Sandiford also submitted that using an exchange rate of \$3.50 an award of damages of Bds \$8,869.42 was indicated.
- [74] Finally, Miss. Sandiford cited the case of **Vanneck v. Sluggett (1999)** Kemp & Kemp Personal Injury Practice – para. K2-055 where an award of £2,800 (RPI adjusted to £3,266.95) had been awarded to a claimant who had suffered soft tissue injuries to his neck and back which had fully resolved after twelve months. Some twenty seven months post accident, the claimant still felt short duration spasms of back pain approximately once every two weeks which he dealt with by standing up straight so as to stretch out his back. Using an exchange rate of \$3.50 she submitted that an award of damages of Bds \$11,434.33 was reasonable.
- [75] In closing Counsel for the Defendant submitted that the awards in these cases had adequately addressed the Plaintiff's pain and suffering as well as his loss of amenities and suggested that an award in the range of between \$8,869.42 and Bds\$11,781.25 would be reasonable for the injuries sustained.

**Mr. Nicholls' rebuttal:**

[76] In response, Mr. Nicholls sought to distinguish the facts in the three cases cited by Counsel for the Defendant from the evidence adduced in the case under review. He submitted that the awards in the cases fall at the very bottom of the scale suggested in the Judicial Studies Board Guidelines. Furthermore, in his view, none of the cases approximated the level of stresses and pain experienced by the Plaintiff in the case under consideration.

[77] I now turn to the assessment of the Plaintiff's damages in this case.

**General Damages:**

[78] The broad general principle governing the assessment of damages in cases involving personal injuries is that the Court should award the injured party such a sum of money as will put him in the same position as if he had not sustained the injuries. [See per Lord Blackburn in **Livingston v. Rawyards Coal Co (1880) 5 App. Cas. 25 at 39**]

[79] While the general principle (sometimes referred to as *restitutio in integrum*) can afford some guidance to a Court in assessing compensation for financial loss resulting from an accident, the principle is of little guidance in the assessment of damages for the pain and suffering undergone and the impairment which results from the injuries. In fixing damages for such non-pecuniary loss the Court can do no more than endeavour to arrive at a fair estimate, taking into account all relevant considerations. [See per Earl Jowitt in **British Transport Commission v. Gourley [1956] A.C. 185**]

[80] In cases involving personal injuries it is useful for the Court in assessing general damages to have regard, where appropriate, to the five considerations identified by Wooding C.J. in the much cited case of **Cornilliac v. St. Louis (1965) 7 WIR 491** as follows: (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering which had be endured: (iv) the loss of amenities suffered; and (v) the extent to which, consequentially the Plaintiff's pecuniary prospects have been materially affected.

[81] In this case, no evidence was led that the Plaintiff's pecuniary prospects were affected by the injuries he sustained. Accordingly, the Court's assessment of the Plaintiff's damages will center on four of the five heads identified in the **Cornilliac case** as follows:

(i) The nature and extent of the injuries sustained:

[82] The Court accepts the Plaintiff's oral testimony which was unshaken in cross-examination and corroborated by the medical evidence contained in the three medical reports adduced in evidence and finds as a fact that as a result of the motor vehicular accident the Plaintiff suffered soft tissue injuries to his neck, left shoulder and lower back. The Court finds further that the whiplash mechanism of the injury caused him moderately severe soft tissue injury and significant pain and debility.

(ii) The nature and gravity of the resulting physical disability:

[83] The Court accepts Dr. Harper's conclusion and prognosis regarding the Plaintiff's condition set out in the report of December 26, 2005 that as a result of the accident the Plaintiff experienced severe debilitating neck, upper and lower pain, significant enough to require

his absence from work for at least four weeks and from his high-level sport for several months. The injuries sustained were whiplash in nature with chronic soft tissue complications and associated with recurrent pain and debility when activity became strenuous or prolonged.

[84] There was no complete resolution of symptoms but Mr. Hill was functioning normally. Prognosis for complete resolution of the symptoms of these injuries is guarded and there might be painful or debilitating symptoms in the future. Alternatively with the progress of time and continuing strengthening and flexibility exercises he might realize complete recovery from painful symptoms.

[85] Having regard to the medical report of Dr. A. L. Harper dated August 27, 2006, the Court is satisfied that by May 26, 2006 (some 2 years and 5 months post accident) the Plaintiff was still experiencing a painful “flare-up” of the previous injury described in Dr. Harper’s earlier medical report. The Court is also satisfied that the Plaintiff remains vulnerable to future “flare ups” or episodes of low back pain associated with the injury sustained in the accident.

(iii) The pain and suffering which had be endured:

[86] The Court finds that the Plaintiff experienced pain in his neck and back from the moment he alighted from the vehicle following the accident. The pain caused him to seek immediate medical attention at the FMH Emergency Clinic. This is corroborated by the medical evidence outlined in the report of Dr. Michael Wharton dated March 11, 2006 which describes the Plaintiff’s initial pain as of moderate severity. [See paragraph [25] above.]

- [87] Some 4 days after the accident, the Plaintiff consulted Dr. Harper whose findings are outlined above between paragraphs [27] and [33] above and accepted by the Court. The Court also takes note of the fact that oral nonsteroidal anti-inflammatory medication and skeletal muscle relaxants were prescribed as well as topical treatments for relief of the pain and muscle spasm.
- [88] The Court is also satisfied that on being reviewed at the FMH Clinic on December 30, 2003 (1 week after the accident) the Plaintiff was still having pain in his neck and back. Warm compresses were advised and his sick leave extended until January 6, 2004.
- [89] The Court accepts the medical evidence that by the time of his second consultation with Dr. Harper (i.e. 3 weeks after the accident) the Plaintiff's neck and upper back pain and stiffness had significantly improved. [See paragraphs [34] to [37] above.] His lower back pain had, however, intensified and was aggravated by prolonged sitting (as at a desk) when he returned to work, and by initiation of movement after extended periods of inactivity. Oral skeletal muscle relaxants and topical therapy were continued and a programme of physical therapy was continued.
- [90] The Court accepts the medical evidence that at the Plaintiff's third consultation with Dr. Harper on March 10, 2004 (some 10 weeks after the accident) the programme of physical therapy which he had followed had yielded good results and the Plaintiff generally felt much better. However, standing for periods of more than 10 minutes and undertaking the prescribed rehab exercises still resulted in moderate back pain. While the Plaintiff had been able to return to work around the end of January, 2004, the Plaintiff had not resumed exercise or

training due to his concern was that the ongoing pain which he was still experiencing might indicate persistence of a serious injury that would be aggravated by resuming strenuous exercise. [See paragraphs [38] to [40] above]

[91] The Court accepts the medical evidence that at his fourth consultation with Dr. Harper (some 11 weeks post accident) while there was no complaint of back pain, the Plaintiff was, for the first time in months, experiencing mild to moderate pain with prolonged reading, as with sitting at a desk/reading, for periods of more than 10-15 minutes. The pain would become more severe the longer the session lasted. The Court also accepts Dr. Harper's assessment that the Plaintiff's new pain had arisen from weakened, deconditioned postural muscles that had been brought into play in the recent past as the pain and discomfort of the other injuries had resolved, allowing a greater range of activities. [See paragraphs [41] to [42] above]

[92] The Court is satisfied that by the time of his fifth consultation with Dr. Harper in May 2004, the Plaintiff was still complaining of low back pain that was eased only by his bending forward or getting off his feet.

[93] The Plaintiff's sixth consultation with Dr. Harper took place in mid-October 2004. He complained that strenuous activity and prolonged standing provoked soreness and moderate pain of the lower back. Raising the legs helped to alleviate the pain. He also complained that there had been infrequent episodes of sudden lower back spasm that caused severe back pain. These episodes were transient in nature and resolved quickly without treatment.

(iv)The loss of amenities suffered:

[94] The Court accepts that although the Plaintiff was not a professional hockey player, he was, at the time of the accident, at the peak of his hockey playing career and had suffered an injury which had resulted in a setback to his amateur hockey career. The Plaintiff was the immediate past captain of the Barbados national senior hockey team and had lost the opportunity and the honour of representing Barbados at the Central American and Caribbean Games in 2004. He was at the peak of physically fitness. He obviously enjoyed playing hockey and missed out on the enjoyment of playing hockey at the domestic international and club levels for several months following the accident. His return to the game following the accident has also been difficult as well as painful and the Plaintiff has, to all intents and purposes, lost his place in the Premier League.

[95] Having considered the evidence, the submissions of Counsel and the authorities which were cited, the Court is of the view that on the one hand, the figure of \$35,000.00 suggested by Mr. Nicholls is on the high side having regard to the disaggregated approach which he used in arriving at the suggested award. The Court is aware that such an approach is expressly frowned upon by Sir John May who in **Brown v. Woodall [1995] P.I.Q.R. 36** observed that:

“... I respectfully agree that the learned judge’s approach of adding up the various figures for the awards that she thought appropriate for the various different injuries could well lead one to an award which, compared with other awards, is in the aggregate larger than is reasonable.

In this type of case, in which there are a number of separate injuries, all adding up to one composite effect upon a plaintiff, it is necessary for a learned judge, no doubt having considered the various injuries and fixed a particular figure as reasonable compensation for each, to stand back and have a look at what should be the global aggregate figure and ask if it is reasonable compensation for the totality of the injury to the plaintiff or whether it would in the aggregate be larger than was reasonable.”

[96] On the other hand, the Court is of the view that an award in the range of between \$8,869.42 and Bds\$11,781.25 suggested by Miss. Sandiford is far too low given the nature and extent of the Plaintiff’s injuries, the gravity of the resulting disability which he still suffers, the pain and suffering which he endured and the loss of amenities suffered by him particularly between the date of the accident in 2003 and October 2004 when he eventually resumed playing hockey.

[97] In all the circumstances, the Court is of the view that an award of \$28,000.00 for general damages is reasonable in this case and makes that award under this head.

**Future medical care:**

[98] In the Particulars of Damages the Plaintiff claims what his Counsel characterized as “the modest sum of \$500.00 for future medical care.” However, while it has been established from the medical evidence that the Plaintiff is vulnerable to future “flare-ups” or episodes of back pain, no evidence was led regarding the estimated frequency or cost of the Plaintiff’s future medical care. In the circumstances, there was no

factual basis on which the Court could properly make an award for future medical care and no award is made under this head.

**Domestic Assistance:**

[99] Again in the Particulars of Damages the Plaintiff claims the sum of \$2,000.00 for domestic assistance. Once again, absolutely no evidence was led either in his oral testimony or in the medical reports regarding the necessity for such assistance. There was, accordingly, no factual basis on which the Court could make such an award and no award is made under this head.

**Special Damages:**

[100] Special damages totaling \$2,647.95 and broken down as specified hereunder are allowed:

Medical Reports	-	\$850.00
Medical Services	-	\$855.00
Physiotherapy services	-	\$850.00
Medication	-	<u>\$ 92.95</u>
		<u>\$2,647.95</u>

**Summary of awards:**

[101] In summary, the awards which the Second Defendant shall pay to the Plaintiff are as follows:

General damages	-	\$ 28,000.00
Special Damages	-	<u>\$ 2,647.95</u>
	-	<u>\$ 30,647.95</u>

[102] The above awards will bear interest on the special damages at the rate of 4% per annum from the date of the issue of the Writ until today, and thereafter at 8% until payment, and on the general damages at 8% from today until payment.

[103] The Plaintiff shall have his costs certified fit for one attorney-at-law to be agreed or taxed.

**Maureen Crane-Scott,  
Judge of the High Court(ag)**