BARBADOS

[Unreported]

IN THE SUPREME COUIRT OF JUDICATURE

HIGH COURT

CIVIL JURISDICTION

No. 1691 of 2002

BETWEEN:

DAVID THOMAS **Plaintiff**

AND

MICHAEL MARSHALL **First Defendant**

KENNETH JONES **Second Defendant**

Before the Honourable Madam Justice Kaye Goodridge, Judge of the High Court

2007: May 7, 8, 9, 25

2010: February 22

Ms. Sharon Parris and Ms. Michelle Russell for the Plaintiff

Mr. Gregory Nicholls of George Walton Payne and Co. for the Defendants

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DECISION

[1] In this action the Plaintiff is claiming damages for personal injuries and loss suffered as a result of a water sports accident which occurred on 10 November 2001.

[2] The Plaintiff was a publican and he resides at 49 Spring Road Market, Weighton York in the United Kingdom. He was born in England on 1 March 1944 and at the commencement of the trial was 63 years old.

[3] The First Defendant resides at Trents Tenantry in the parish of St. James. He is a Water Sports Operator and is now employed with West Water Adventures.

[4] The Second Defendant resides at Lower Carlton in the parish of St. James. He is the owner of the jet ski which struck the Plaintiff and was the employer of the First Defendant at the material time.

The Pleadings

In his Amended Statement of Claim filed on 25 September 2002 the Plaintiff alleges that he sustained injuries, loss and damage as a

result of the jet ski which was under the care and control of the First Defendant colliding with the Plaintiff.

It is alleged that the Defendants were negligent because of the failure on the part of the First Defendant to –

(i) handle and or control the jet ski;

(ii) instruct the Plaintiff to remain on shore at a reasonable distance from the jet ski while it was being taken out to sea; and

(iii) warn the Plaintiff of the risk and/or hazard of being in close proximity while it was being taken out to sea.

[6] The Defendants deny that the accident occurred as a result of negligence and/or breach of duty on the part of the First Defendant and allege that the accident occurred notwithstanding the exercise of all reasonable care and skill displayed by the First Defendant. The Defendants raise in the alternative the defence of *volenti non fit injuria* in so far as the Plaintiff, with full knowledge of the risk of injury or damage to himself, voluntarily consented to accept such a risk and to waive any claim in respect of any injury or damage that may be occasioned to him. The Defendants also raise the defence of contributory negligence.

The Plaintiff's evidence

[7] The Plaintiff testified that in early November 2001 he, his wife and other relatives arrived in Barbados on holiday.

On 10 November 2001 the Plaintiff was on the beach in the company of his wife and relatives when they were approached by the First Defendant who offered them a ride on the jet ski for $100. That offer was accepted by the Plaintiff. The First Defendant then gave the Plaintiff instructions on how to operate the jet ski, provided the Plaintiff and his wife with life jackets and instructed them to follow him into the water. There were other people on the beach and in the water at the time.

[8] The First Defendant then started to pull the jet ski into the water and the Plaintiff followed. As the First Defendant was pulling the jet ski, he stumbled and let go of it. The jet ski then came towards the Plaintiff who held out his hands to stop it, it stopped temporarily but then crashed onto the Plaintiff's leg. The Plaintiff found himself sitting in shallow water and when he looked down he saw his left leg flapping about in the water.

[9] The First Defendant then came to the Plaintiff's aid, and with the help of other persons, lifted him out of the water. An ambulance was summoned and the Plaintiff was taken to the Queen Elizabeth Hospital where he was treated and detained for 5 days.

[10] Under cross-examination, the Plaintiff said that he had never been on a jet ski before. He maintained that the First Defendant had told him to come into the water and get on the jet ski from the back. He said that there were little waves coming in but it was not rough. He denied that Mr. Marshall had told him to wait on the beach or that the surge was a little rough so he had to wait until it had calmed down. When questioned further, the Plaintiff said that the jet ski was about 12 to 15 feet away, that he tried to get out of the way but the sand was very soft and it was difficult to walk back. He said about 5 to 6 seconds had elapsed between the time when the jet ski got away from the First Defendant and when it struck him. He did not know why the First Defendant let go of the jet ski.

[11] When questioned about the profitability of the business, the Plaintiff agreed that the business had a profitable year in 2001 and the gross profit for 2002 was larger, but did not agree with the suggestion that the business got more profitable each year. With respect to the claim for work done on the house, the Plaintiff maintained that this was work which he would have been able to do and he would not have had to hire someone to do it, if not for the accident.

[12] The Plaintiff's wife, Mrs. Rosemary Thomas, testified that she was present when the arrangements were made for the rental of the jet ski. Her evidence is that the First Defendant asked the Plaintiff and herself if they had used a jet ski before and they replied that they had not. The First Defendant then showed them how to use the controls and gave them life jackets. He then told them **"I will pull the machine out into the water, then you follow me and get on behind."**

[13] Mrs. Thomas continued that the First Defendant began to pull the machine off the sand. She then returned to the sunbed to get a tissue because she had a runny nose and her husband waited for her. She then came back towards her husband and he began to walk into the water. As she reached the water's edge, the Plaintiff was about knee deep in the water. She then looked across to the jet ski and realized that it was loose and moving very quickly towards her husband. Her husband was moving backwards with his hands out and as the machine got to him, his hands went on the side of the machine, he fell down and there was a cracking sound. The jet ski fell on him but then the water took it away from him. At this point he was sitting in the sand at the water's edge. She testified also that there were a lot of people in the water.

The Defendant's Evidence

[14] The First Defendant testified that he is a water sports operator currently employed with West Water Adventures and that he has been involved in water sports operations for about 15 years.

[15] As he recalled, on 10 November 2001 he went to Paynes Bay beach where he approached a guest who was arranging for a jet ski ride. The Plaintiff was on the beach and after being encouraged by his friend decided to have a go on the jet ski.

The First Defendant then gave the Plaintiff a life jacket and he and the Plaintiff then walked towards the jet ski which was on the beach at the time. He then showed the Plaintiff how to operate the controls, asked him if he understood to which the Plaintiff replied 'yes'.

[16] He further testified that he told the Plaintiff to wait there and he then proceeded to pull the jet ski into the water where he put it in a working condition. He was in the process of flushing sand from the stern when a shore break shifted the jet ski to his right side.

He described a shore break as a swell, a wave, a part of the operation of nature and testified that on that day the shore break was just like any other day; it was a little bit unpredictable but not much more.

[17] As he was trying to put the jet ski back in its rightful position, he saw the Plaintiff standing in line of the side of the jet ski. The water moved the jet ski away from him. He then saw the Plaintiff on the sand and then went to his assistance. He testified that this was not the first time that a jet ski had got away from him but it was the first time that a customer got injured.

[18] According to the First Defendant, as he waited on the sand with the Plaintiff, the Plaintiff told him that he should tell the cops that he was just walking the beach and the jet ski struck him because his insurance did not cover jet ski rides.

[19] Under cross-examination, the First Defendant stated that he did tell the Plaintiff to wait on the sand. He denied telling the Plaintiff to follow him into the sea. He stated that when he was pulling the jet ski into the water the Plaintiff was on the dry sand. He did not see when the Plaintiff entered the water and his eyes were on the Plaintiff all the time.

[20] Under further questioning he denied that there were other persons in the water. He said that there were no persons in the water where the jet skis are supposed to operate in the area where the Plaintiff was standing. The First Defendant stated that he was holding the jet ski in a proper way as he was preparing and securing it. He said it was not true that he did not tell the Plaintiff to stay a proper distance away. He maintained that he did tell the Plaintiff to stay away.

[21] When questioned about his experience as a jet ski operator, the First Defendant replied that he had a lot of experience operating jet skis, that the water shifts and changes, there is ebb and flow of the tide and that he was accustomed to this.

[22] Counsel then asked the First Defendant why he did not tell the Police about the conversation he supposedly had with the Plaintiff about his insurance and he replied that he did not because he was still uncomfortable about how the day had gone and that he had no intention to tell the Police anything like that, it was not part of his thoughts at the time.

[23] The Second Defendant testified that he was not present when the accident occurred. According to this witness, the First Defendant worked for him as a jet ski operator and he had a lot of experience.

The Claim in Negligence

[24] In order for the Plaintiff to succeed in his claim, he must establish the following –

(i) that the First Defendant owed him a duty of care;

(ii) that there was a breach of that duty by the First Defendant;

(iii) that he suffered damage or loss as a result thereof.

Duty of Care

In the well known case of **Donoghue v Stephenson [1932] AC 562**, Lord Atkin stated –

> "A duty to take care arises when the person or property of one is in such proximity to the person or property of another that, if due care is not taken, damage might be done by one to the other."

It is not a matter of contention between the parties that the jet ski was under the control of the First Defendant at the material time and therefore he owed a duty of care to the Plaintiff.

Breach of the Duty of Care

[25] It was submitted on behalf of the Defendant that the accident did not occur as a result of any breach of the duty of care. Despite the exercise of all reasonable care and skill by the First Defendant, the accident could not have been avoided.

[26] Counsel submitted that the Plaintiff had failed to prove that the loss of control of the jet ski by the First Defendant was through any carelessness or recklessness on his part. The specific act which caused the jet ski to leave the First Defendant's hand was a swell and this was a case not of negligence but of inevitable accident. He stated that the Plaintiff had not established that the First Defendant failed to do anything that could have prevented the jet ski from coming out of his control or from going in the direction of the Plaintiff.

[27] It was further urged by defence counsel that the defence of *volenti* was applicable. According to counsel, the Plaintiff, by agreeing to go on the jet ski without any previous experience and by failing to wait on the beach as instructed by the First Defendant, voluntarily consented to accept such a risk. In addition, the Plaintiff was contributorily negligent in that he walked towards the jet ski when it was unsafe to do so, did not comply with instructions and gave the First Defendant no warning of his intention to enter the water.

[28] Counsel for the Plaintiff argued that the First Defendant breached the duty of care owed to the Plaintiff. She contended that the First Defendant, as a jet ski operator, should have been familiar with the sea and its conditions. It was incumbent upon the First Defendant to take all necessary caution to ensure that he had properly secured the jet ski. It was therefore unacceptable that the First Defendant with his experience and knowledge of sea conditions had lost control of the jet ski because of a wave or swell which was not out of the ordinary.

[29] It was the further submission of counsel that the defence of inevitable accident could not succeed when one examined the circumstances surrounding the accident.

[30] As stated earlier it is the Defendants' contention that there was no negligence on the part of the First Defendant but that this was a case of inevitable accident which would allow them to escape liability. In the text **Charlesworth & Percy on Negligence (10th Edition)** inevitable accident has been defined at paragraph 3 – 98 as follows –

> "Inevitable accident is where a person does an act, which he lawfully may do, but causes damage, despite there having been neither negligence nor intention on his part."

There can be no inevitable accident unless the Defendant can prove that something happened over which he had no control and the effect of which could not have been avoided by the exercise of care and skill - per **Lord Esher MR in The Albano [1892**] P.419.

[31] According to the First Defendant, he was holding the jet ski and shaking it up and down, flushing the sand from the stern when a swell pulled the jet ski out of his hand. The evidence further shows that the waves or swells were not out of the ordinary that day, a "little bit unpredictable but not much more".

[32] It seems to me that the First Defendant with his experience should have taken sufficient care in these circumstances to ensure that the jet ski did not escape from his control, there being no evidence of rough seas or unusually high swells on the day in question. It was reasonably foreseeable that if the jet ski was not properly handled or controlled, it could escape and cause injury or damage. On the facts, the defence of inevitable accident cannot succeed. I find that the First Defendant failed to exercise sufficient care and skill in handling the jet ski and this failure resulted in the accident. I therefore hold that the First Defendant breached the duty of care owed to the Plaintiff.

[33] It was also contended by the Defendants that they could rely on the maxim *volenti non fit injuria*. *Volenti non fit injuria* has been defined at paragraph 3-77 in the text **Clerk & Lindsell on Torts (19th Edition)** as –

> "a voluntary agreement by the claimant to absolve the defendant from the legal consequences of an unreasonable risk of harm created by the defendant, where the claimant has full knowledge of both the nature and extent of the risk."

[34] According to counsel for the Defendants, the First Defendant had instructed the Plaintiff on the use of the jet ski, told him to wait on the beach and when the Plaintiff chose to go into the water, he accepted the risk. The question which must be asked therefore is whether the Defendants have established on the evidence that the Plaintiff either impliedly or explicitly agreed to wave his claim for negligence against them prior to the accident occurring.

[35] In my view, the evidence falls short of the standard required for the defence of *volenti* to succeed for the following reasons. The First Defendant's evidence is that he –

(i) gave the Plaintiff a life jacket and assisted him in putting it on;

(ii) showed him how to operate the control switch; and gave him full information about operating it;

(iii) told the Plaintiff his borderlines off the beach (for safety to avoid colliding with any other obstacles in the water);

(iv) told him to wait on the spot where he was given the instructions.

[36] There was no evidence from the First Defendant that at the time of the making of the contract he advised the Plaintiff of the danger of being close to the machine whilst it was being prepared for use. Yet the First Defendant was aware that the Plaintiff had never gone on a jet ski before. In his cross-examination of the Plaintiff, counsel for the Defendants suggested to the Plaintiff that he had been told by the First Defendant to wait on the beach, that the surge was a little rough so he had to wait until it calmed down but the Plaintiff denied this. This was an important issue. But it must be noted that the First Defendant gave no evidence of telling the Plaintiff about the surge being rough or waiting until it calmed down. Having had the opportunity to assess both the Plaintiff and the First Defendant as they gave their evidence I accept the Plaintiff's evidence that he was not told by the First Defendant to wait on the beach. It is clear that the Plaintiff did

not have full knowledge of the nature and extent of the risk involved and therefore could not have consented, either explicitly or impliedly to accept any such risk. Further, there is no evidence of any agreement by the Plaintiff to waive his claim against the Defendants. The Defendants therefore cannot rely on the maxim *volenti non fit injuria*.

[37] The Defendants also pleaded contributory negligence in that the Plaintiff walked towards the jet ski when it was unsafe to do so, failed to comply with the directions of the First Defendant to wait on the beach and failed to give the First Defendant any warning of his intention to enter the sea before the First Defendant was ready for him to board the jet ski.

[38] Section 3 of the **Contributory Negligence Act, Cap 195** provides for the apportionment of liability in a case of contributory negligence. A person is guilty of contributory negligence whenever he ought reasonably to have foreseen that, it he did not act prudently, he might suffer injury, and he must take into account the possibility of others being careless – per **Lord Denning L.J in Jones v Livox Quarries Ltd [1952]** 2QB 608 at 615.

[39] It has already been determined that no instruction was given to the Plaintiff to remain on the beach. Rather the Plaintiff was invited to follow the First Defendant into the water. In the circumstances therefore, the issue of contributory negligence does not arise. The First Defendant is liable for the injuries suffered by the Plaintiff because of his breach of the duty of care and the Second Defendant, as the employer of the First Defendant is vicarously liable for the actions of the First Defendant.

The Assessment of Damages

[40] I now turn to the assessment of damages -

General Damages

The court has had the benefit of the following medical reports which have not been challenged by the Defendants.

1. Medical report from the Queen Elizabeth Hospital dated 15 November, 2001.

2. Medical report from Dr. C.A. Henderson, Market Weighton Surgery dated 3 October, 2002.

3. Medical reports dated 13 June 2002 and 3 February 2004 respectively from G.V. Johnson F.R.C.S., Consultant Orthopaedic Surgeon, Hull Royal Infirmary.

(a) The nature and extent of the injuries sustained

[41] The Plaintiff suffered a closed comminuted mid shaft tibia and fibula fracture of the left leg. He was taken to theatre and had a fixation of his fracture under an epidural anaesthesia.

By 9 January 2002 the Plaintiff had to undergo a revision of the tibia nailing of the left leg. While the wounds healed there was no suggestion of new bone formation. In January 2003 the Plaintiff tried an Exogen machine to stimulate bone formation and promote healing. No bony formation occurred despite the Plaintiff continuing on the machine for a period of about 10 months.

[42] **(b) The nature and gravity of the resulting physical disability**

The fracture remains un-united, in spite of a revision operation including grafting, and the use of a bone stimulating machine. Further surgery has not been ruled out but there is no guarantee that this would be successful. In addition, should the Plaintiff catch his foot awkwardly, he experiences momentary sharp pain.

The Plaintiff has a series of scars on his left shin. The left foot reveals that he has bilateral pes cavus and clawing of the toes. Walking up

and down stairs have become a problem for the Plaintiff, as well as walking and standing for prolonged periods. Driving long distances, even as a passenger, is painful.

He was forced to relocate because he could not get up and down the stairs to his apartment.

(c) The pain and suffering endured

Initially when the accident occurred, the Plaintiff felt no pain but felt pain when the First Defendant and other persons lifted him out of the water. On the flight home he was in pain despite having the use of additional seats as these offered no relief because they were side by side. He could not eat for the duration of the flight because he did not want to go to the bathroom.

For about 2 years after the accident the Plaintiff wished that the leg had been amputated because of the pain which he suffered. To this day the Plaintiff continues to suffer pain at the site of the fracture for which he requires painkillers regularly. If he walks any distance he experiences pain which affects him for the rest of the day.

(d) The loss of amenities

[44] Prior to the accident the Plaintiff was an avid golfer and a keen darts player playing darts for Essex. He also kept fish pools. He enjoyed gardening and maintaining the garden and hanging baskets around the pub and restaurant and greeting his customers.

[45] The Plaintiff had intended to do the renovations on the holiday home in Yorkshire which he purchased with his wife in 1998. All these activities have been curtailed as a result of the accident. He cannot stand on the leg too long to throw darts. His golf is now limited because the twisting effect after striking the ball results in pain in his leg. He now uses an electric trolley and can only manage nine holes on a good day. He no longer does gardening or any renovations. He is unable to play with his grandchildren.

[46] The Plaintiff also testified that he could not engage in sexual intercourse with his wife for two years after the accident.

(e) The effect to which the Plaintiff's pecuniary prospects have been materially affected

[47] At the time of the accident the Plaintiff was a Publican who owned a third share in the Three Horses Shoe Bar and Restaurant. His main role was to look after the barside of the business and he also acted as a bouncer. He also did any manual work. Because of his inability to stand for prolonged periods of time and to climb stairs easily, the Plaintiff was unable to return to work. He is now a registered disabled person and receives a sickness benefit of £70 per week and a weekly mobility allowance of £40.

[48] Ms. Parris cited three cases for the court's consideration. These are **Williams v Doyle (1998), Budd v Bonditch (1998)** and **Re G (1998)** where the awards for general damages were £85,000 (agreed), £75,000 and £60,000 respectively. Counsel also referred to the **Judicial Studies Board Guidelines 2005** and submitted that the Plaintiff's injuries fell within the category of Severe Leg Injuries, the most serious injuries short of amputation. "Such injuries would include extensive degloving of the leg, where there is gross shortening of the leg or whose fractures have not united and extensive bone grafting has been undertaken." The range of award specified for that category of injury is from £52,500 to £76,620. Counsel suggested an award of £70,000 approximately $245,000.

[49] Having regard to the evidence and after consideration of the authorities cited, it is my opinion that an award of $150,000.00 is reasonable under this head.

Past Loss of Earnings/Drawings and Future Loss of Earnings

[50] The Plaintiff has claimed the sum of £152,201.04 under this head. In support of this claim the Plaintiff has relied on the accounting

records prepared by Mr. Brian White. The accountant has given actual drawings/earnings for the years 2000 to 2003 which include a decrease for the year April 2002 to March 31, 2003.

[51 I have examined Mr. White's documents but I have not had the benefit of his oral testimony. I find much difficulty with the projections. In his words "I speculate that profits may have been £14,000 more had Mr. Thomas been capable of working." In addition there is no evidence before the court of the income tax or any other statutory outgoings applicable in England for which the Plaintiff would have been liable.

However, doing the best I can, I am of the opinion that while there may have been an increase in both earnings and profits had the Plaintiff still been employed I must be conservative in looking at this issue. I am not convinced that the Plaintiff's earnings for the year ending 2003 would have reached the level of £27,271 an increase of

£14,000 as suggested by the accountant.

[52] Having regard to the growth history of the business, I calculated that the increase would have been more in line with an additional £5,000. I therefore consider that the Plaintiff's loss of earnings up to the sale of the business (2003) is £5,000 = Bds $17,500. From 2003 to the date of reaching age 65 (indicated date of retirement) i.e. 2009 I assess his future loss of earnings to be £18,000 x 6 x 3.5 = £108,000. From this figure should be deducted the sum of £22,800 which represents benefits received, leaving the amount of £85,200 x 3.5 = $298,200. I therefore award the Plaintiff the sum of $298,200 for future loss of earnings.

Loss of Profits

[53] Counsel for the Defendant submitted that the Plaintiff was not entitled to recover profits in addition to drawings. The Plaintiff was self-employed and as such he is entitled to make a claim for loss of profits as well as for loss of earnings.

[54] Having regard to the figures the £37,134 represents the profits of the three partners for 2001 (see page 3 of the Accountant's report). The Plaintiff's share of the profits is £12,378.

For 2002 his share was £14,055 which was £10,392 less than that received by the other two partners. For 2003 the Plaintiff received £3,801.50 when the overall profits decreased to £15,230.00.

[55] Taking the trend into account, I am of the opinion that part of the decline in profits may have been attributed to the Plaintiff's absence from the business. Again, doing the best that I can and based on the speculative figures in the report, I have concluded that the profit for 2003 may have been no less than that for 2002 and I use this figure as a guide.

The Plaintiff's loss of profit for the year 2002 is £10,392 x 3.5 = BDS $36,372. For 2003 I award the Plaintiff £20,000 less the £3,807.50 which he received i.e. £16,200 or BDS $56,703. The loss of profits which the Plaintiff suffered for the years 2002 and 2003 is therefore BDS $93,075.

[56] The Plaintiff gave evidence that the business was sold in 2003 because he could no longer participate in it. There was no serious challenge to this. No evidence was led to show that efforts had been made to try to find someone who could fulfill his role in the business and therefore satisfy the court that he had made reasonable efforts to mitigate his losses.

[57] Based on the speculative nature of the figures and the absence of evidence relating to the statutory outgoings, I am of the opinion that the 2002 figure of £24,447 is a reasonable starting point and I would use this as the multiplicand. Up to the date of the Plaintiff reaching age 65 the period is 6 years. I will not award compensation for the entire period, having regard to the vicissitudes of business and I would use a multiplier of 3 (£24,447 x 3 = £73,341) from which I would deduct the £35,000 which the Plaintiff received for the sale of the business. I therefore calculate the loss of profits up to the date of retirement as follows – Base sum £20,000 x 3 = £60,000 less £35,000 = £25,000 x3.5 = $87,500 under this head. The award for loss of profits is $180,575.

Past Domestic Assistance

[58] Prior to the accident, the Plaintiff was an independent and active individual. After the accident the Plaintiff was unable to take care of any of his personal needs and had to rely on his wife for this care during the first five (5) months post accident. Thereafter he was able to attend to most of his personal needs with some assistance from his wife. This care was rendered for the first two years. Under this head the Plaintiff claims the sum of £78,780.

[59] Mr. Nicholls' concern with this figure is that the measure used to arrive at the said sum is unknown. Taking all the facts into consideration I consider that the Plaintiff should receive an award for assistance at 6 days a week for the first five (5) months at the rate of $40 per day; – 4 days a week for the next nineteen (19) months and thereafter 2 days per month for the next 3 years. I would award the Plaintiff the sum of $19,840.00.

Future Domestic Assistance

[60] The Plaintiff still needs some assistance which his wife provides. There is the possibility that the Plaintiff would have to undergo future surgery even though at present he has opted not to undergo this treatment. I would award assistance at 3 days a month for 3 years being the sum of $4,320.

Loss of Congenial Employment

[61] Counsel for the Plaintiff submitted that an award of £5,000 would be appropriate under this head and cited the case of **Wilkie v Oxford B.H.S Trust Kemp & Kemp E3-042** in which the Plaintiff was awarded £5,000 for loss of congenial employment.

The Plaintiff in this case enjoyed his job as a publican, in particular "meeting and greeting". But I do not think that the circumstances merit a separate award since this has been incorporated under the award for pain and suffering and loss of amenities. No award is made under this head.

Loss of Do It Yourself Functions

[62] The Plaintiff gave evidence that prior to the accident he and his wife had purchased a holiday home on which he did some work on weekends. He also undertook the repair jobs in the business. In **Dominey v Amenco (Poole) Ltd Kemp and Kemp E3-029** the Plaintiff was awarded £7,000 for loss of the ability to garden and perform other do it yourself functions. Having considered the facts in this case I would award the Plaintiff $5,000 under this head.

Future Medical Care

[63] The Plaintiff testified that he takes pain killers on a regular basis to

alleviate the pain and incurs a cost of £7 to fill the prescription. I award the sum of $2,500.

Loss of Enjoyment of Holiday

[64] The accident occurred while the Plaintiff was on holiday with his relatives and he was unable to go sight seeing as planned. In the case of **Ross v Bowbelle & Marchioness [1997] 1W L R 1159** an award of £2,500 was made for a ruined European Holiday. I would award the Plaintiff the sum of $3,500 under this head.

Special Damages

[65] Counsel for the Defendants accepted the amounts claimed for pharmaceuticals, radiology services, equipment rental, transportation and air travel back to England. But Mr. Nicholls argued that the Defendants should not be required to reimburse the cost of fixing up the retirement home as this was not foreseeable. Even if the Court considered that an award should be made, it should not exceed more than 30% of the labour costs, since some of the works were specialist works.

[66] The Plaintiff testified that he and his wife resided in an apartment on which was located upstairs the business premises. Because of the accident he was unable to get to the apartment and he took the decision to relocate to the holiday home and expended certain sums totaling £4,424. It is my opinion that this is a reasonable expense attributable to the accident and the Plaintiff is entitled to recover these expenses and I award him $15,450 under this head.

[67] After the Plaintiff was discharged from hospital he and his family changed hotels because his hotel had stairs but no lift and he was in a wheelchair. However no bill or receipt was submitted to support this claim and I make no award for this.

[68] The awards for specials are as follows:-

Pharmaceuticals	-	$ 343.70
Radiology services	-	100.00
Equipment rental and purchase	-	385.00
Transportation $462.84	-	546.00
Vehicle rental	-	398.00
Air travel £3,124 x 3.5	-	10,934.00
TOTAL	-	**$12,706.70**

Summary of Awards

[69] In summary, the Defendants shall pay to the Plaintiff the awards as follows:

General Damages	$150,000.00
Past Loss of Earnings	17,500.00
Future Loss of Earnings	298,200.00
Loss of Profit	180,575.00
Past Domestic Assistance	19,840.00
Future Domestic Assistance	4,320.00
Do-it-Yourself Functions (past)	15,450.00
Do-it-Yourself Functions (Future)	5,000.00
Future Medical Care	2,500.00
Additional Expenses	12,706.70
Loss of Employment of Holiday	3,500.00
	$735,976.70

[70] The awards will bear interest on the special damages at the rate of 6% per annum from the date of the issue of the Writ until payment and on the general damages at 6% from today until payment.

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

KAYE GOODRIDGE

Judge of the High Court