

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No 370 of 2011

Between

JOAN ELLIS

CLAIMANT

-AND-

KEISHA REID

DEFENDANT

**Before the Honourable Madam Justice Jacqueline A.R. Cornelius, Judge of
the High Court**

2015: October 31

2014: October 29 and 30;

November 13 and 25;

Mr. Philip McWatt for the Claimant

Mr. Michael Yearwood with Miss Nicole Roachford for the Defendant

JUDGMENT

[1] The Claimant, Joan Ellis, was involved in a motor vehicle accident caused by the Defendant, Keisha Reid. The vehicle driven by the defendant collided with the rear end of the claimant's vehicle and the claimant's vehicle subsequently spun violently and collided with a nearby wall.

[2] The defendant admitted liability, and Ellis obtained judgement on 16th October 2012, with damages for personal injury to be assessed. This is the

application for that assessment, the defendant's insurers have already compensated the claimant for the damages to her motor vehicle.

[3] At the time, Miss Ellis was 53 years old and employed as a Systems Supervisor at Prism Services Inc. She had previously been employed as a Proof Officer at CIBC FirstCaribbean for about 18 years prior. She is now 56 years old. She has one daughter who she assisted with a catering business they operated from their home.

[4] The particulars of negligence as pleaded are as follows:

- a) Failing to keep a proper lookout
- b) Failing to steer or control the said vehicle or to apply the brakes adequately or at all so as to avoid colliding with the claimant
- c) Driving too fast in all the circumstances
- d) Colliding with the claimant's vehicle; and
- e) Failing to take any or any adequate care for the claimant in all the circumstances.

The EVIDENCE

Miss Ellis filed a witness statement on 21st May 2014, and was cross examined on it. Much of the evidence was undisputed. She stated that she was taken to the Queen Elizabeth Hospital (QEH) on the day of the accident and attended to by **Dr. Chaynie Williams** MBBS, DM and the staff of the

Accident and Emergency Department. A medical report dated 26th June 2012 was prepared. Subsequent visits thereafter were made to Dr. Harold Watson at FMH Emergency Medical Associates (FMH), a private facility. The claimant opted to go to a private facility given that her pain was quite severe coupled with the unavailability of staff and long waiting hours at her polyclinic. She visited FMH on a number of occasions and a medical report dated 9th February 2010 was prepared.

[5] Ellis was subsequently placed on sick leave. She gave evidence of her incapacity: she could not do basic domestic chores and needed her daughter's assistance. Dr. Watson subsequently referred her to Dr. Prasad Chode for pain and discomfort that she was having in her knee as a result of the accident. She attended Dr. Chode in February of 2011, some 16 months after the accident. At the insistence of the defendant's insurers, Harmony General, the claimant was seen by Dr. Jerry A.W. Thorne on 15th February 2013 and a medical report dated 8th March 2013 was subsequently prepared.

[6] Prior to the accident, according to Miss Ellis, she was an active person who enjoyed walking her dog twice a day. Her right knee never gave her any trouble but as a result of the accident she discontinued her usual exercise regimen and gained a lot of weight. She has constant pains in her right knee with the occasional swelling, pain in her right hip and ribs along with pain in

her neck to such an extent that she has difficulty looking backwards. She is also unable to move her right hand behind her back.

- [7] Miss Ellis stated that negotiations with the defendant stalled on the issue of Future Care with respect to her knee. Dr. Chode recommended an MRI, the results of which were that her right knee was found to have osteoarthritis and degenerative changes. The MRI also revealed a tear in her meniscus. Knee replacement surgery was recommended but she could not afford the surgery at the moment.
- [8] She stated further that her daughter, Tam-y-ko, took over a great deal of the household chores shortly following the accident until she felt capable to return to work and to do domestic things. On her return to work she was placed on light duties because she could not bend down to plug in, unplug and test the machines she previously tested. She now had to take an assistant with her to do these things, all of which she did alone prior to the accident. She has, however, been made redundant since then.
- [9] Mr. Ellis stated that her condition continues to deteriorate. She cannot, for example, get out of the bathtub unless aided by her daughter. She cannot clip her toenails or put on her brassiere without the assistance of her daughter. Since being made redundant, she has been unable to find work and has been told that given her present circumstances, there will not be a great deal of

opportunities to find work. Her greatest fear was that given her present finances and her inability to undergo the recommended treatment, her right knee would continue to deteriorate at a fast rate to the point where she would become a hindrance to her daughter rather than an assistant

[10] She further expanded her statement on the stand. In her evidence in chief the claimant said she was no longer as helpful in her household. She could no longer clean as long as she did before. She stated that her net earnings were \$3,986.00 but she could not state her gross earnings or the amount of her deductions.

[11] Under cross-examination, the claimant stated that the reason for her redundancy was the economic downturn and not related to her accident. The economic downturn, in her view, was the reason she had been unable to obtain employment. She stated further that the reason why she waited 16 months before seeing a specialist in respect of her knee was because she did not have the funds to do so. Prior to the accident, Miss Ellis stated that she weighed approximately 175 to 180 pounds with her height being 5'3.5". At present her weight was 210 pounds.

[12] **Dr. Harold Watson**, BSc (Hons) MBBS MSc. DM provided both a medical report and gave oral evidence in this matter. His medical reports, dated 9th February 2010, 11th November 2010 and the contents therein were presented

not as expert evidence, but as an early medical responder involved in the Claimant's care.

- [13] Ellis was seen on 5 occasions in 2009: 18th and 27th October, 2nd and 7th November, and 20th December 2009. On both occasions in October, the claimant complained of persistent pain of the neck, back, chest and right hip. She was given pain killers, a muscle relaxant and time from work. On her return visit on 2nd November, the claimant complained about pain to her right knee and stated that she felt as though her knee was 'giving out'. The physical examination revealed that she was moving stiffly but it was found, *inter alia*, that she had full range of movement in her right knee with tender swelling over the tibial tuberosity.
- [14] On 7th November, Miss Ellis complained of pain to her neck, back and knees. She was scheduled to attend physiotherapy the following week but her main concern was that on walking, sometimes her right knee would 'give away' and be exceedingly painful.
- [15] An assessment was made of the muscle spasm to her neck and back and the soft tissue injuries to her chest, right shoulder, right hip and right knee. Her leave of absence from work was extended and she was advised to continue with the previously prescribed medications.

[16] On 20th December, Miss Ellis attended FMH again with her main complaint being an intermittent knocking of her right knee along with a sensation of her knee 'giving away'. She was referred to Dr. Chode for an evaluation of the knee injury. An X-ray of the right knee did not reveal significant bony pathology. When specifically asked whether the injury to the right knee might have occurred during the accident, Dr. Watson replied as follows:

“When the other injuries are settling, then one becomes aware of the other injuries, particularly to the limbs. It is my opinion that the injury to her knee was as a direct result of the motor vehicle accident that occurred, resulting in all the other injuries that she had.”

[17] He gave oral evidence that on 4th May 2001, the claimant suffered previous trauma to her right knee when she slipped and fell. At the time, she was 45 years old and it was found that she had mild degeneration of her right knee. He contended however that she had recovered fully given that she had made no other complaints to him about the said knee. He did not agree that the passage of time (eight to ten years) was enough to cause the significant degeneration as was seen in the claimant.

[18] A report was also prepared by **Dr. Prasad Chode** MBBS, Dip (Orth), MS (Orth) dated 18th October 2011.

[19] Dr. Chode observed that the claimant was a 55 year old female who appeared in normal general health walking with a limp. In her right knee, there was no swelling or deformity but there was significant tenderness over the anterior joint line. The movements were good but painful and he could not examine her fully because of the significant pain in her right knee.

[20] Dr. Chode ordered an MRI (Magnetic Resonance Imaging) which revealed that the claimant suffered from degenerative joint disease of the right knee.

He summarized as follows:

“The joint is degenerated because of the aging process and her overweight. The injury has triggered the onset of pain (in) the arthritic, but asymptomatic joint. Treatment options range from simple conservative treatment with medication, intraarticular steroid injections to arthroscopic surgery and total knee replacement at a later date. She may be a candidate for arthroscopic surgery at this time as she is not responding to medication prescribed by her previous doctor.”

[21] In a subsequent letter on the report dated 29th November 2011 written to Mr. McWatt, Dr. Chode noted that the claimant suffered from significant degeneration of the knee joint and these injuries occurred over a long period of time. He noted that the accident could have triggered the onset of pain in

an already arthritic joint but he could not confirm that the injury caused any acceleration in the degenerative process of the knee. Dr. Chode noted further that Miss Ellis was likely to suffer from pain in her right knee indefinitely unless she had treatment.

[22] In a further letter dated 14th September 2012, he noted that the claimant was likely to require joint replacement surgery in the future.

[23] Dr. Chode stated that he was never advised of the claimant's previous injury to her knee. He opined that this information would have been relevant to the diagnosis and ought to have been disclosed. Degeneration of the knee to the extent of that found in the MRI could have worsened due to time and aging without the intervention of the 2009 accident and he maintained his view that due to the degree of degeneration, it may have preceded the accident.

[24] He opined further that the degeneration was multifactorial and included trauma, age and genetics as well as secondary factors. The 2001 trauma could be a contributing factor as well as her age and overweight. He maintained that non-invasive measures ought to be tried before knee replacement surgery. The lack of pain in his view was not indicative of a lack of degeneration or a significant degree of degeneration. Even without the intervention of the accident, the claimant may have required knee

replacement surgery and he stated further that 30-40% of the present symptoms *were referable to the 2009 injury.*

[25] Dr. Chode, under cross-examination, stated that the best diagnosis was given with the aid of the MRI and that knee replacement surgeries had a lifespan of up to 20 years.

[26] Ellis was also seen by **Dr. Jerry Thorne FRCS**, at the request of the defendant's insurers. A report dated 8th March 2012 was prepared.

[27] Dr. Thorne, like Dr. Chode, is an Orthopaedic surgeon. He examined the claimant on 15th February 2013. He found that the claimant suffered multiple blunt trauma focused primarily about the right side of her body. He stated that the “collage of clinical signs and symptoms, the character of the injury in its totally (sic) and the cadence of her post injury course are all consistent with her description of the cause.” He then proceeded to divide the claimant’s injuries into its integral parts. He stated thus at page 6 para 1 of his report:

“When seen in my clinic... there was a marked reduced range of movement at the right knee, an effusion and general finding consistent with a profoundly arthritic right knee, her left knee curiously was normal, and that in and of itself is unusual because in idiopathic osteoarthritis of the knee there is usually some evidence of arthritic

change in the contra lateral knee, none exist(s) here, so that a primary cause of has to be sought and that primary cause must, on a balance of probabilities be laid at the site of the accident occurring on the 13 of October 2009, it is my unequivocal conclusion that given the favourable balance of probabilities that this lady, on the day in question bore a mildly degenerative and certainly symptom free right knee to the site of the accident and has suffered such an injury to the right knee as to precipitate and or accelerate degenerative changes in the right knee, and given her alter gait derangement attracts a 7% permanent physical impairment of the whole person, unfortunately this condition is associated with recurrent severe discomfort about the knee, only partially relieved by the exhibition of non steroidal anti-inflammatory drugs and associated with worsening occupational disability. I do not accept that this lady is too young for definitive curative management intended to ameliorate her occupational disability, rather it is proposed that this lady be given the opportunity for a pain free right knee and an unfettered return to her employment and this can be achieved by offering her a total knee replacement...”

[28] Dr. Thorne stated further that total knee replacement surgery could be obtained at a cost of \$30,000.00 and a second one in 15 years for \$35,000.00. He did not indicate any other costs of consequence beyond this.

[29] Under cross-examination, Dr. Thorne stated that the degenerative process was affected by a number of factors. There was no clearly defined way of decelerating the process but the process could be accelerated by certain specific factors. Trauma to the joints was a factor that could accelerate the process. The MRI had to be viewed in concert with other tests such as clinical examination and the complaints of the patient. It was not a safe assumption to link pain and degeneration. He stated further that there was no clear parallel link on the MRI and the patient's complaint. The MRI could show significant degeneration and yet the patient did not complain and the reverse.

[30] Dr. Thorne stated further that the degeneration found in the knee in 2001 must have worsened.

ISSUES and SUBMISSIONS

[31] The role of the Court in assessing damages is succinctly stated by **Moore-Bick LJ** in *Smithurst v Sealant Construction Services* [2011] EWCA Civ. 1277, submitted by the defendant, as follows:

“damage is an essential element of the cause of action in negligence and therefore, as part of establishing liability on the part of the defendant’s, the claimant must prove on a balance of probabilities that the defendant’s act or omission caused the harm in respect of which he claims. If he fails to do so, his claim will fail... It is to be contrasted with the assessment of damages, which involves determining the extent of the loss suffered by the claimant... That would involve an enquiry into what would have happened, either in the past or in the future, if the defendant had not caused harm to the claimant and may require the court to assess the chances that one or more particular events would or would not have occurred...”

[32] The primary issue in this case is whether the accident was solely or primarily the cause of the degeneration in the right knee of the claimant.

[33] On this first issue, the medical evidence is clear. Both Dr. Chode and Dr. Thorne opined that the claimant had degenerative joint disease and osteoarthritis that was asymptomatic prior to the accident. It is clear to the Court that the accident was not the sole cause of the degeneration of the claimant’s knee and that such degeneration was present at the time of the accident.

- [34] However, did the accident cause an acceleration of the degenerative process in the claimant's knee?
- [35] Dr. Chode's evidence on this issue was not determinative. He could not confirm if the injury caused any acceleration in the degenerative process given that he had no prior investigations like X-Rays following the accident which revealed significant injury to the bones and soft tissue of the right knee.
- [36] In her final visit to Dr. Watson on 20th December 2009, the claimant had an X-Ray of her right knee done. That X-Ray did not reveal any significant bony pathology. Dr. Thorne found on a balance of probabilities that the injury to the right knee precipitated and or accelerated the degeneration in the right knee. He accepted that the knee was mildly arthritic prior to the accident as did Dr. Chode, but Dr. Chode opined that he could not agree that the degeneration would have been to the extent that the claimant had seen in such a short (2 years) period of time. Dr. Chode changed this position however in his *viva voce* evidence after being informed of the 2001 trauma and the accompanying X-Ray. He stated thereafter, in light of the new evidence that 30 – 40 % of the present symptoms were attributable to the injury of 2009.

[37] In this area, I prefer the evidence of Dr. Thorne. He made it quite clear that the acceleration of the degeneration was due to the injury. Dr. Chode attributed 30 – 40 % of the present symptoms to the injury. The claimant was previously asymptomatic but the accident had a marked impact on the quality of her life thereafter. In all the circumstances therefore, I hold that there was a significant acceleration in the degeneration of the claimant's knee as a result of the accident. It is difficult in the circumstances of this matter to determine what the acceleration period is. None of the evidence before this court provided any assistance in this determination. Drs. Chode and Thorne both opine that the claimant is likely to need a total knee replacement. The doctors disagree as to when; given that Dr. Chode suggests less invasive methods like medication and steroid injections be tried first whilst Dr. Thorne suggests the surgery as 'definitive curative management intended to ameliorate her occupational disability'.

[38] The Court is unable therefore to say what the acceleration period in this matter was likely to be.

Heads of Damage

General Damages

[39] The claimant submitted that she suffered soft tissue injuries to her head, back, chest, right shoulder, right hip and right knee. The most serious of

these injuries being to the right knee and the right shoulder. The MRI revealed a number of findings;

- 1) Mild erosion of the articular cartilage in the medial compartment;
- 2) Marked erosion of the articular cartilage on the medial patella facet;
- 3) Mucoïd degeneration of the ACL with the intercondylar notch cyst, which has both soft tissue and intra-osseous components;
- 4) Tricompartiment osteoarthritis, most marked in the medial and patellofemoral compartments;
- 5) Meniscal degeneration with probable small anterior root lateral meniscal degenerative tear; and
- 6) Patellar tendinosis.

[40] The injury to the right shoulder, the claimant submits, is expected to eventually resolve but the right knee which was previously asymptomatic is now causing pain and will continue to do so until adequate treatment is provided.

[41] With regard to the knee injury, the claimant submits that her injuries fall on the higher side of moderate. This is the type of injury defined in the Judicial Studies Board (JSB) Guidelines as follows:

“Injuries involving dislocation, torn cartilage or meniscus which result in minor instability, wasting, weakness or other mild future disability. This bracket also includes injuries which accelerate symptoms from a pre-existing condition over a pro-longed period of years.”

Awards in this area range from between £10,900.00 to £19, 250.00 but with the 10% uplift, the range is between £11,900.00 and £21,175.00. In respect of the shoulder injuries, the claimant submits that the JSB guidelines class the injury as being moderate and describe it as follows:

“Frozen shoulder with limitation of movement and discomfort with symptoms persisting for about 2 years also soft tissue injuries with more than minimal symptoms persisting after two years but not permanent.”

For the above bracket the award before uplift ranges from £5,800 to £9,400.00 and after 10% uplift from £6,380.00 to £10,340.00.

[42] The claimant submitted further, three cases for this court’s consideration. The first case was *Jones v Hewitt & Jones* decided 20th September 2001, Nottingham County Court reported at para 16-014 Kemp & Kemp March 2014. The claimant was a 41 year old female teacher at the time of a road traffic accident in which she suffered injury to her left knee, head, chest and ribs. Immediately following her accident, it was thought that the most

severe injury was to her neck and back. Two years after the accident she underwent surgery successfully to manipulate her spine but the surgeon also performed an arthroscopy on her knee. The examination showed cartilage damage such that surgery was inevitable within 2 – 3 years. The pain in the knee was continuing. She was awarded the sum of £18,000.00 (£12,000.00 for the knee injury and £6,000.00 for two years of continuous pain in the neck and back). Taking into account inflation the updated award for injury to the knee would be £17,760.00 (£12,000 x 1.48) or BBD\$62,160.00

[43] The second case is *Elder v Sands* decided 2nd February 1997 in **Chelmsford County Court (para 16-017 Kemp & Kemp)**. The claimant was 32 year old woman who was hit by a car and one of her injuries was to her right knee. She had difficulty with stairs, could not kneel, the knee occasionally gave away and she could not resume pre-accident sports. An arthroscopy revealed cartilage damage in all compartments. Her symptoms were likely to persist indefinitely and it was likely that she would develop osteoarthritis within 5 – 10 years of trial. Total Knee replacement would be required by age 60. She was awarded £14,000.00 which converts to £22,960 accounting for inflation at a rate of 1.64 (BBD\$80,360.00).

[44] The third case is *Cheston v Letkey* decided 19th April 1999 (**para G2-037 Kemp & Kemp September 2013**). The claimant sustained injuries to her

neck, chest and pelvis but after six months she was left with an injury to her shoulder in the region of her trapezius muscle. There was limitation of movement to the extent of twenty degrees in the area. She was unable to drive for three months, unable to work for a period of two weeks and medical evidence suggested that the symptoms ought to have persisted for a period of three years and nine months. She was awarded £5,000.00 (£7,750.00 with inflation at 1.55; BBD\$27,125.00)

[45] The claimant submits thus that an award under this head of BBD\$89,285.00 is appropriate. The figure is comprised of BBD\$62,160.00 for the knee injury and \$27, 125.00 for the shoulder and other injuries sustained.

[46] The defendant submits the case of *Croft v ST. David's Care in the Community Ltd* decided 7th December 2009 (Personal Injuries Quantum Database). The claimant suffered an injury to her left knee after she slipped and fell. At the time of the accident she was 47 years old and in the early stages of osteoarthritic degeneration and vulnerable to injury. She was awarded the sum of £5,000.00 or approximately the equivalent of BBD\$21,000.00. The defendant submits in the circumstances that the claimant should be awarded BBD\$15,000.00, a sum less than in *Croft* given that at the time of the accident the claimant had significant degeneration.

[47] Having considered the authorities and submissions therein, I cannot agree with the defendant's position on this issue. The medical evidence does not support definitively their position that the claimant had significant degeneration at the time of the accident. To the contrary, the most that Drs. Chode and Thorne could opine was that degenerative joint disease was present at the time of the accident and the accident accelerated it. There was no assessment as to the extent of the degeneration save that Dr. Chode opined that 30 – 40 % of her present symptoms were caused by the accident.

[48] There has been no real submission by the defendant with respect to the other injuries suffered by the claimant such as the injury to her right shoulder. Taking that into account, in all the circumstances therefore, I consider that an award of BBD\$75,000.00 is appropriate under the head of general damages for pain and suffering and loss of amenity.

Loss of Earning Capacity/ *Smith v Manchester* award

[49] Awards under this head, the claimant submits, are usually given where the claimant due to some injury sustained has become handicapped or disadvantaged on the labour market. These claims are typical where a claimant has been rendered in a less competitive position in the labour market. The essential question is whether the injury has affected the claimant's ability to compete with fellow employees in the same manner as

she was able to prior to the accident. It should be noted that a claimant did not have to be in employment at the date of trial (*Cook v Consolidated Fisheries*).

- [50] The claimant referred the court to Dr. Thorne's evidence that the claimant's injury attracted 'a 7% physical impairment of her whole person' and the recommended treatment attracted a '15% permanent impairment'.
- [51] The defendant's suggest that no award should be made under this head. They refer the Court to the claimant's evidence that her continued unemployment is as a result of the economic downturn and they submit further, that there was no evidence that the claimant had a chance of finding employment but for the defendant's negligence.
- [52] This Court must therefore make an assessment based on the evidence before it. Under this head the considerations that a Court must take into account have long been established and include (a) whether there is a real or substantial risk that the claimant will lose his present job before the estimated end of his working life; (b) what is the value of the financial damage which the claimant will suffer if the present risk materialises; (c) having regard to the degree of risk, the time when it would materialize; and (d) the factors which in a particular case will or may affect the claimant's chances of getting a job at all or an equally well paid job.

[53] What then is the basis of any award that this Court could make? The evidence thus far is that the claimant has been applying for work and did a Quikbooks course to make herself more marketable. The evidence also is that she is nearly 60 years old with an injury which, it is arguable could possibly cause her to be less competitive in the job market. There is no assessment of this disability however that the court could make an objective award based on. The claimant suggests that her previous net salary could be used but there is no evidence to verify the figure she gave in her testimony. Indeed, the claimant could not recall what her gross salary or her statutory obligations were.

[54] In the circumstances, I am of the view and hold that the claimant has suffered some disadvantage but after considering all relevant factors, there is no proof of the vital elements of income, the rate of net earnings and her years of working life. In the circumstances, therefore, I decline to make an award under this head.

Past Domestic Assistant

[55] Damages under this head were agreed at \$780.00

Ongoing Domestic Assistance

[56] The claimant seeks an award of \$3,400.00 under this head representing assistance for five days a week over 17 weeks. The defendants indicate that

there is no evidence that the claimant needed domestic assistance for 5 days a week.

[57] The claimant's evidence was that around July 2014, she could start doing chores but she would be unable to finish and her daughter would have to take over. In the circumstances, I am of the view, bearing in mind the medical evidence, that it is quite reasonable for the claimant to need some domestic assistance throughout the week. There is no evidence that she needed the assistance 5 days a week. In my view, 3 days a week is quite reasonable in the circumstances and accordingly I award the sum of (\$40.00 x 3 days x 17 weeks) BBD\$2,040.00

Future Medical Expenses

[58] The claimant submits that the evidence regarding her knee injury is as follows:

- a) The claimant had shown signs of degenerative changes in her right knee prior to the accident;
- b) Prior to the accident the claimant's right knee was asymptomatic;
- c) The accident caused a tear in the claimant's meniscus;
- d) The accident caused the right knee to become symptomatic and painful; and

e) The accident caused the degenerative changes in the claimant's right knee to accelerate and is responsible for at least 30 – 40% of the degeneration.

[59] The claimant seeks an award of \$45,000.00 representing \$30,000.00 for the present surgery and \$15,000.00 for the replacement.

[60] The defendant submits that if the court is minded to make an award for the knee replacement surgery, the figure should be discounted to reflect the uncertainty present. In accordance with Dr. Chode's evidence, 60 – 70% of the claimant's injuries were caused by pre-existing factors, notably the 2001 trauma, degeneration and obesity, whilst only 30 – 40% could be attributed to the accident. With the cost of one surgery being BBD\$30,000.00 the claimant should be awarded \$10,500.00

[61] In order for this Court to make an assessment, I must first determine whether the claimant would have needed surgery in any event. The evidence in this case is that the knee replacement surgery is the best recommended option of treatment. Neither one of the medical practitioners could definitively say when they expected the claimant would have needed the surgery but for the accident given that she was suffering from degenerative joint disease as shown in the MRI. All of the evidence points to an acceleration but there is

no evidence to include by what period of time the injury accelerated the degeneration.

[62] Dr. Chode argued that less invasive methods of treatment could be tried first but he also stated that medication prescribed by Dr. Watson appeared to provide little relief. Dr. Thorne argued with certainty that the claimant was a proper candidate for the knee replacement thereby allowing her to return to employment. The claimant has clearly expressed the desire to have the surgery but cannot do so because of a lack of money. Dr Thorne gave evidence that each surgery would cost approximately \$30,000, which I accept from the medical evidence that she will need immediately. Dr Thorne's report says, and I accept she will need another surgery within her lifetime at a cost of \$35,000. Her counsel asks for \$15 000 towards that surgery, to take into account the usual discount.

[63] In all the circumstances therefore, I think it appropriate to make an award for \$45,000.00 representing the cost of the two surgeries.

Future Domestic Assistance.

[64] In light of the award for future medical expenses, this court must consider an award for future domestic assistance. Dr. Thorne's evidence was that the recovery period for joint replacement surgery is 3 months. Accordingly, I

award the sum of (\$40.00 per day x 5 days per week x 12 weeks) \$2,400.00 under this head.

DISPOSAL

[65] In accordance with the findings therein, a summary of the awards to the claimant is as follows:

PSLA	\$75,000.00
Special Damages	\$4,006.96 (As agreed)
Smith v Manchester	<i>nil</i>
Past Domestic Assistance	\$780.00
Ongoing Domestic Assistance	\$2,040.00
Future Medical Expenses	\$45,000.00
Future Domestic Assistance	\$2,400.00
Total	\$129,226.96

[66] Special damages shall bear interest at a rate of 4% per annum from the date of the issue of the statement of claim until today and 8% per annum thereafter until payment. General damages shall bear interest at a rate of 6% from today until payment.

[67] The claimant shall have her costs to be assessed if not agreed for one Attorney-at-Law.

Jacqueline A.R. Cornelius
Judge of the High Court

