Neutral Citation Number: [2025] CIGC (Civ) 8

Cause No: G2017-0139

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

BETWEEN:

MAGDALYN BURLINGTON

Plaintiff

-and-

BUTTERFIELD BANK (CAYMAN) LIMITED

Defendant

Appearances:	**Mr Delroy Murray of Murray & Westerborg for the Plaintiff** **Mr Alexander Davies of HSM Chambers for the Defendant**
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**20 January 2025**
Judgment:	**20 February 2025**

Personal injuries claim—slipping accident causing ankle injury—assessment of damages

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JUDGMENT

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A. Introduction, summary of the claim and relevant procedural background

1. On 2 September 2014, Ms Magdalyn Burlington was at work at the Butterfield Bank branch at Albert Panton Street in George Town. Just after midday, she was returning from buying her lunch and was walking down the stairs in the Butterfield's garage, from the ground floor level to the basement level, when she slipped and fell. She alleges in her Statement of Claim that it had been raining, and the steps were wet.

2. On 25 August 2017, the Plaintiff commenced the current proceedings against the Defendant for negligence and for breach of its duty as an occupier to lawful visitors. Her allegations are that the Defendant failed to take sufficient care in various respects to ensure that she would be reasonably safe when using the stairs. In her oral evidence before me, she suggested that the treads of the stairs were too short, the stairs were not adequately lit, and the handrail was incorrectly positioned. Although not pleaded, the Plaintiff's case had developed over time to include a claim that she had developed complex regional pain syndrome as a consequence of the accident, which severely affected her ability to work and to enjoy normal activities of daily living.

3. Having initially denied the claim, in March 2021, the Defendant admitted liability, but it continues to dispute causation and the extent of the alleged consequences of the Plaintiff's accident and alleges that the Plaintiff is guilty of contributory negligence.

4. The Plaintiff's claim came before me on 31 May 2024 on a summons filed by the Defendant on 9 February 2024 to strike out the action for want of prosecution. I gave judgment on that application on 10 July 2024. For the reasons set out in detail in that judgment, I concluded that there had been inordinate and inexcusable delay in advancing the claim on the Plaintiff's part, but it would be wrong to strike out the action in circumstances where the Defendant had admitted liability and had consented to judgment being entered for damages to be assessed. Instead, and having regard to the fact that the primary source of prejudice to the Defendant was that its chosen expert on chronic pain syndrome was no longer available, I concluded that the fair outcome was to debar the Plaintiff from arguing:

> *"46. … that the consequences of her accident have persisted beyond the immediate sequelae of the soft tissue injuries that she suffered to her left ankle as a result of her fall. In other words, the Plaintiff may pursue her claim for damages in respect of those soft tissue injuries and for the surgical treatment that she underwent to repair the ligaments in her foot and ankle and any pain or loss of amenity directly consequential upon that injury and surgery, limited to matters for which there is support from an expert in orthopaedic injuries. She may not pursue any claim that she has developed complex regional pain syndrome or any similar condition, or that any of the general continuing pain that she complains of is a consequence of her accident."*

That judgment accordingly limits the scope of the claim that the Plaintiff is permitted to advance on the assessment of damages hearing with which I am now concerned to exclude any aspect of her complex regional pain syndrome.

5. The Plaintiff alleges in her Statement of Claim that she suffered the following injuries as a result of the accident:

   5.1 a prolapse of her L4/L5 intervertebral disk causing nerve root compression

   5.2 a tear of her talo-fibular ligament in her left ankle

   5.3 a chondral lesion to the talar dome in her left ankle

   5.4 a traumatic arthrosis of her left sub-talar joint

   5.5 damage to the trochlear surface of her left talus, and

   5.6 associated pain.

   Apart from the nerve root compression to her L4/L5 vertebrae, all of the Plaintiff's pleaded injuries involve her left ankle.

6. Based upon those injuries, in addition to general damages for her injuries, the Plaintiff's pleaded claim is for past and future medical treatment and expenses, care, loss of earnings and loss of pension entitlement.

7. Following my determination of the scope of the claim that the Plaintiff is permitted to advance, the Plaintiff filed an updated Schedule of Loss on 25 November 2024. The Plaintiff, rightly, no longer advances any claim for future losses but does include an additional unquantified claim for interest. The Defendant filed an updated counter-schedule on 13 January 2025. The parties' rival contentions can therefore be summarised as set out in the following table:

	Head of claim	Plaintiff's case	Defendant's primary case	Defendant's alternative case
(a)	General damages - pain, suffering and loss of amenity	CI $75,000	CI $19,375	CI $27,126
(b)	Loss of earnings	CI $234,000	CI $0	CI $26,373
(c)	Medical expenses	CI $66,340 CI $8,200	CI $9,893 CI $0	CI $41,093 CI $0
(d)	Care and assistance	CI $55,000	CI $0	CI $0
(e)	Attorneys' fees	CI $137,770	CI $0	CI $0
	Total	**CI $576,310**	**CI $29,268**	**CI $94,592**

The Defendant's figures are before any reduction for contributory negligence.

B. The factual evidence

8. In addition to the documentary discovery, the factual evidence before the Court comprised two witness statements and oral evidence from the Plaintiff and a witness statement filed on behalf of the Defendant from a Ms Jacqueline Terry. Ms Terry is the vice president in the Defendant's human resources team and provided evidence regarding the Plaintiff's employment and salary history whilst working for the Defendant and exhibited relevant documents. It was sensibly and helpfully agreed that it was not necessary for Ms Terry to be cross-examined.

9. In her oral evidence, the Plaintiff made candid concessions about certain aspects of her claim. My assessment of her as a witness is that she was clearly honest in the evidence that she gave and was doing her best to help the Court. I accept her evidence as truthful. That is not to say that her evidence is necessarily completely accurate in all respects.

10. The Plaintiff's evidence regarding the circumstances of her accident is that at around 12:00 pm on 2 September 2014, she was returning from buying her lunch. She was intending to walk down the stairs in the car park from the ground floor to the basement to meet her nephew's girlfriend, who was due to be attending the Defendant's offices for a job interview. The Plaintiff was carrying her lunch in a paper bag under her arm, she was carrying a drink in one hand and was holding the handrail with her other hand. It had been raining all day, with the result that the stairs, which are not enclosed from the elements, were wet. Although she rarely used the stairs, she was aware of this issue because she

had previously raised it in a premises audit that she performed in 2013. It was common ground that the stairs are made of concrete, without any added finish, such as tiles.

11. The Plaintiff had descended about 2 steps when she lost her footing and fell. She said that her right foot slipped off the step and went out in front of her and her left leg bent underneath her. She fell down the remainder of the stairs, striking her tail bone on about 7 of the steps on the way – the Plaintiff described this as being "airborne", although this is difficult to accept as being an accurate description. She found that she had a cut across her left ankle, which was bleeding. She also had abrasions on her knuckles and knee and a large bruise on her thigh. In response to Mr Davies' cross-examination, the Plaintiff denied that she was rushing or that she was exaggerating her description of the fall.

12. The person who the Plaintiff was planning to meet was not in the basement, so the Plaintiff returned to her desk in the Defendant's offices. The Department Head and the Plaintiff's manager, Mr Donald House, both noticed that she was bleeding, that her ankle was swollen, and that the Plaintiff was limping. The Plaintiff told them that she had slipped on the stairs. They wanted to call an ambulance, but the Plaintiff told me that she was embarrassed and so refused the offer. They therefore arranged for the Plaintiff to see her GP, Dr Ruthlyn Pomares. Mr House drove the Plaintiff to Dr Pomares' clinic. Dr Pomares cleaned and dressed the Plaintiff's cut and sent the Plaintiff for an x-ray. Mr House took the Plaintiff to the Chrissie Tomlinson Hospital for the x-ray. Dr Pomares called the Plaintiff that evening to tell her that the x-ray did not show any fracture. She prescribed the Plaintiff some medication and recommend that the Plaintiff use an ankle brace.

13. The Plaintiff confirmed in cross-examination that she did not complete the Defendant's internal accident report form until 27 April 2015, when she returned to work at that time. She explained that the head of her department should have completed it at the time of her accident but did not, which was why the Plaintiff had to do so. Mr Davies challenged the Plaintiff on differences in some of the details regarding the Plaintiff's fall as set out in the accident report form and in the Plaintiff's witness statement and oral evidence. I did not consider those differences to be significant in my overall assessment of the question of contributory negligence, which was the only area of their potential relevance.

14. On 17 September 2014, the Plaintiff commenced a course of physiotherapy. However, this did not help, and so she saw Dr Herzig at the Chrissie Tomlinson Hospital on 27 October 2014. He recommended that she continue the physiotherapy and that she wear an air cast on her ankle. He

treated her with a course of steroid injections into her ankle but had to stop after the third injection as the Plaintiff suffered an adverse reaction.

15. By the end of December 2014, the Plaintiff was complaining of lower back pain with tingling radiating into her left leg. She was examined by Dr Herzig on 29 December 2014, who referred her for an MRI scan of her back. She saw various specialists at Health City between January 2015 and March 2016 in relation to her back.

16. The Plaintiff says that she took time off work from 5 February 2015 to 24 April 2015, as recommended by her doctors. By April 2015, the Plaintiff had run out of funds to pay for the physiotherapy, and so she discontinued that treatment on 4 May 2015.

17. In March 2016, the specialists at Health City discharged the Plaintiff with a recommendation that she continue with physiotherapy and that she should see a foot and ankle specialist. During her examination by Mr Hepple, the orthopaedic expert in this case, the Plaintiff told him that by this time she was suffering two types of pain in her foot and ankle. The first was a deep, dull pain localised around the anterior border of her ankle, related to activity and which resolved when she was resting. The second was a nerve-type pain, consisting of shooting pains radiating up and down her leg, mainly from her ankle upwards but also with pain in her lower back radiating downwards.

18. In the summer of 2016, the Plaintiff connected with Dr Paul Yungst, who is based in Sarasota and is a foot and ankle specialist. Dr Yungst advised the Plaintiff that she had an osteochondral defect of the talar dome. I interpose here that the talus is the bone in the ankle immediately below the tibia, with the tibia resting on the talar dome, cushioned by cartilage. The Plaintiff says that Dr Yungst told her in a telephone consultation that the cartilage and bone were shattered as a result of the accident, although she accepted in cross-examination that this description was not included in any document emanating from Dr Yungst.

19. Dr Yungst proposed an ankle arthroscopy and offered to perform this on 27 July 2016. The Plaintiff agreed. Dr Yungst told the Plaintiff that she should expect to be off work for about 4-6 weeks following the surgery.

20. The Plaintiff travelled to Florida on 24 July 2016 in advance of the surgery, and returned to the Cayman Islands on 11 August 2016, following various follow-up examinations. On 10 August 2016,

Dr Yungst told the Plaintiff that the damage to her talar dome was larger in extent than he had thought, and that there was no surgery that could correct this. Dr Yungst indicated that the Plaintiff had early onset arthritis as a result. The Plaintiff had further physiotherapy during the remainder of August 2016, however the Plaintiff was suffering significant pain in her ankle and therefore discontinued this. The Plaintiff told Mr Hepple that there may have been a moderate improvement in the deep pain in her foot but the nerve-type pain that she was previously suffering was much worse after the surgery. The Plaintiff did not return to work at any time following this surgery.

21. The Plaintiff looked into the possibility of stem cell treatment, but Dr Yungst wished to review the Plaintiff before agreeing. The Plaintiff saw Dr Yungst on 13 September 2016 and had an MRI scan of her ankle on 14 September 2016. Dr Yungst told the Plaintiff that the MRI had disclosed that the Plaintiff had a chronic partial tear in her anterior talofibular ligament, and it was likely that she would have to undergo further surgery to repair it. Dr Yungst advised the Plaintiff not to work and signed her off sick.

22. The Plaintiff underwent further surgery on her ankle by Dr Yungst on 22 February 2017 and returned to the Cayman Islands on 7 March 2017. The Plaintiff told Mr Hepple that this operation had minimal effect on her pain. From about this time onwards, the focus appears to have moved to the possibility that the Plaintiff had developed a complex regional pain syndrome. The Plaintiff accepted in cross-examination that her complex regional pain syndrome was the dominant factor in her condition from a fairly short time after her accident. However, for the reasons summarised earlier, this is not an aspect of her claim that the Plaintiff is now permitted to advance.

23. The Plaintiff complains that she can no longer wear trousers, maxi dresses, and covered shoes or heels. She has to use a cane or other walking apparatus to assist her with mobility. She complains that the injury to her ankle has affected her daily and leisure activities as well as affecting her physically. She says she was active at school, playing various sports. She continued to be active after school, going for runs and walks on the beach, and participating in fun runs and walks for social causes. The Plaintiff says that she was socially active and enjoyed dancing and going to parties. In addition, she played keyboards in Church bands. She says she can no longer do or enjoy any of these activities. Instead, she has become withdrawn and reclusive.

C. The expert evidence

24. By agreement between the parties, the expert evidence before the Court is limited to the reports dated 25 November 2018 and 30 August 2019 prepared by Mr Stephen Hepple, a consultant orthopaedic surgeon, based at the North Bristol NHS Trust in Bristol, UK. Mr Hepple indicates that his practice consists of general orthopaedic surgery as well as all aspects of trauma, with a sub-specialist interest in the management of foot and ankle pathology.

25. I have limited my summary of Mr Hepple's expert reports to the matters relevant to the claim which the Plaintiff is now permitted to put forward. As is the usual pattern, in his first report, Mr Hepple records the Plaintiff's relevant past medical history, her account to him of the accident and its consequences, his review of the Plaintiff's medical records and then provides his opinion on her condition and the causative effect of her accident. In his supplemental report, Mr Hepple addresses the causation issues more explicitly.

26. Mr Hepple records that the Plaintiff had suffered a previous injury to her left ankle in 2006. The Plaintiff recalled this when it was put to her, and said that she had had x-rays, which were reported as normal, and that she had had some pain and swelling but no ongoing problems or concerns.

27. Mr Hepple records the circumstances of the Plaintiff's accident and the immediate treatment that she received. He notes that on 28 October 2014, Dr Herzig recorded that the Plaintiff had suffered painful symptoms in her left ankle for several years, commencing with her slipping accident in 2006, and that over the course of the 2-3 years before the index accident the Plaintiff's left ankle had flared up again. Dr Herzig also recorded that the Plaintiff reported episodes of her ankle giving way and that she had painful symptoms over the lateral aspect of her ankle on several occasions, usually followed by an episode of swelling. At that time, Dr Herzig found minor instability in the Plaintiff's left ankle but nothing else.

28. The MRI scan of the Plaintiff's left ankle on 29 October 2014 was reported as showing normal appearance of the Plaintiff's distal tibia and fibula. However, there was irregular thinning of the cartilage on the lateral talar dome. Mr Hepple's review of the MRI was that any thinning appeared to him to be within normal limits, but he acknowledged that he is not an expert in interpreting MRI scans.

29. When seen again on 29 December 2014, the Plaintiff was complaining of lower back pain for six weeks with radiation to her left leg, affecting her lateral thigh and calf. Neurological examination showed a hyperreflexic quadriceps reflex but no other serious neurological abnormality. Her ankle was very tender in one area but there was no restriction in her ankle movements.

30. The Plaintiff was reviewed at Health City on 19 January 2015. She was complaining of progressive pain in her ankle, aggravated by walking but relieved temporarily with medication. She complained of tingling and numbness in her left foot and on the outer aspect of her left leg for the previous 2-4 weeks. She also gave a history of low back ache for more than two years. Her previous accident in 2006 was noted. She was diagnosed as having a possible intervertebral disc prolapse and anterior tibia fibula ligament sprain. An MRI scan on 30 January 2015 showed a small disc bulge at the Plaintiff's L4/5 vertebra, which might possibly be impinging on her L5 nerve root. The Plaintiff was referred for physiotherapy to her ankle and back.

31. The Plaintiff's medical records suggest that she was making a gradual improvement in her ankle symptoms during 2015. However, in light of her continuing complaints, she was referred to a foot and ankle surgeon for possible further intervention.

32. Dr Yungst's operation note from 27 July 2016 records that he found a 2.5 x 1 cm lesion on the anterolateral margin of the Plaintiff's talar dome which he debrided. The Plaintiff was reported to have a routine post-operative recovery. In about mid/late August 2016, the Plaintiff was complaining to Dr Yungst that she was still having significant nerve related issues in her foot, which had deteriorated since the surgery. Dr Yungst recommended that she use local anaesthetic patches.

33. When Dr Yungst reviewed the Plaintiff on 13 September 2016, she told him that the surgical site felt better but she was still experiencing an extremely painful sensation along the course of the peroneus longus tendon of her left leg and still had pain on weight bearing. Dr Yungst prescribed painkillers. An MRI scan on 14 September 2016 reported evidence of the previous osteochondral defect measured at 1 cm and a chronic partial tear of the anterior talar fibula ligament but found no pathology in the Plaintiff's peroneal tendons. Mr Hepple indicates that his (non-expert) view is that the anterior talar fibula ligament is difficult to see, but it looks relatively normal in appearance, although the distal attachment cannot be easily visualised

34. Dr Yungst reviewed the Plaintiff on 1 February 2017, when she reported an ongoing extremely painful sensation along the course of her peroneus longus tendon and of the left leg around the posterior ankle with a popping sensation. Dr Yungst noted that the Plaintiff was now using a walking stick. On examination, Dr Yungst reported 6/10 pain on the anterior talar fibula ligament and 5/10 pain on palpation of the peroneus longus tendon, and that the Plaintiff was also complaining of pain on passive movement. A further MRI scan was reported as showing healing of the osteochondral defect, a normal looking peroneus tendon, and a chronic high-grade tear of the anterior talar fibula ligament. Again, Mr Hepple's (non-expert) review of the MRI is that the anterior talar fibula ligament is not well visualised at the distal attachment, but the ligament itself appears reasonably normal. In any event, the Plaintiff was listed for a ligament repair, which was performed by Dr Yungst on 22 February 2017 with no complications. The Plaintiff was recorded to be doing well following the surgery, with no pain on palpation of the surgical site.

35. The Plaintiff was reviewed by Dr Yungst again on 4 April 2017. She had minimal pain at the surgical site but reported ongoing discomfort and soreness when pivoting her foot and ankle and continued to use a walking stick. She was advised to perform exercises to increase her range of movement and to increase her activity.

36. Dr Yungst reviewed the Plaintiff on 13 June 2017, noting that she was complaining of persistent symptoms and disability with an ongoing pain in her left ankle despite an extensive rehabilitation. He did not give her any specific treatment and suggested that she might see a spinal surgeon.

37. I interpose here that it appears that Dr Yungst may have run out of ideas as to further management of the Plaintiff's complaints. The Plaintiff was seen by two further foot and ankle specialists in June 2017. At around this time, Mr James Akinwunmi, a consultant neurosurgeon based in the Cayman Islands, diagnosed the Plaintiff as suffering from a form of complex regional pain syndrome including chronic pain disability and dysesthesia of her left ankle. As previously mentioned, the focus appears to have moved from an orthopaedic cause to the possibility that the Plaintiff had developed a complex regional pain syndrome as a result. However, the Plaintiff is not now permitted to advance a claim in respect of such a condition.

38. Mr Hepple comments on some subsequent scans and x-rays to note that: a plain x-ray of the Plaintiff's left ankle on 22 December 2017 is normal in appearance, with no evidence of ankle arthritis, loss of joint space or irregularity of the joint surface; and a CT scan of the Plaintiff's left ankle on 15 January

2018 shows evidence of previous surgery on the lateral talar dome, which is very nicely healed with good preserved contours, and there is no evidence of any joint space narrowing or early degenerative change.

39. During his examination of the Plaintiff, Mr Hepple noted the following, on which Mr Davies particularly relies:

39.1 When the Plaintiff was distracted, Mr Hepple was able to palpate all areas over the Plaintiff's left foot and ankle, but when specifically discussing her foot and ankle, she reported extreme hypersensitivity to light touch in many areas of her lower leg. Mr Hepple was unable to determine a definite anatomical or dermatomal pattern to her pain or discomfort. Due to the Plaintiff's reported hypersensitivity, it was difficult for Mr Hepple to examine the range of movement in her ankle and hindfoot joints with any reliability.

39.2 The Plaintiff reported altered sensation in multiple areas on the anterior border of her thigh, down the lateral border of her leg and over the dorsum of her foot, but this was not in a strict anatomical pattern.

39.3 Mr Hepple thought that the Plaintiff might be suffering from symptoms of meralgia paresthetica. He therefore palpated around her anterior superior iliac spine to see if compression of this nerve might produce pain in her thigh, but instead the Plaintiff reported that this produced pain in the entirety of her leg. Mr Hepple's opinion is that this is *"a completely nonsense response with no anatomical basis."*

40. Mr Hepple's opinion is that:

40.1 This is a complex and confusing case and not all of the Plaintiff's symptoms are explicable from an orthopaedic point of view.

40.2 There is good evidence in the Plaintiff's medical records to suggest that the Plaintiff had pre-existing problems with her left ankle, including contemporaneous reports that she was suffering intermittent episodes of her ankle giving way and associated discomfort.

40.3 The Plaintiff suffered an acute soft tissue injury to her left ankle, evidenced by the initial swelling and discomfort.

40.4 However, the MRI scan on 29 October 2014 does not show any evidence of a substantial acute injury to the Plaintiff's ankle joint. Mr Hepple considers that the reported thinning of the cartilage over the Plaintiff's talar dome is a chronic finding rather than being acute and it was

probably present since her previous ankle problems from 2006 onwards. He states it is not a consequence of the accident in question.

40.5 The Plaintiff's general practitioner records indicate that the swelling in her left ankle settled within a few weeks of the accident, which is in keeping with a mild soft tissue injury, possibly a grade 1 or 2 ankle sprain, not resulting in significant instability.

40.6 The Plaintiff's description of her symptoms in the weeks after the accident are not typical of a significant ankle injury. Her report of pain radiating-up her leg and the onset of back pain is not consistent with the pathology from her ankle.

40.7 The onset of her back pain appears to have been more than six weeks after the accident. There is no evidence of acute trauma on the x-rays and MRI scans of her lumbar spine. Mr Hepple considers that it is difficult to see a direct relationship between the onset of the symptoms described as neuropathic symptoms and the accident in question.

40.8 Whilst it was reasonable for Dr Yungst to attempt intervention to try to resolve the Plaintiff's symptoms, Mr Hepple does not believe that the lesion observed by Dr Yungst was responsible for the Plaintiff's symptom complex at that time. Mr Hepple considers that this is borne out by the fact that her symptoms did not resolve following the surgery, and that her nerve-type pain seemed to worsen. Mr Hepple comments that this is difficult to explain.

40.9 Mr Hepple does not consider that the damage to the Plaintiff's lateral ligament or the need for the reconstruction surgery performed by Dr Yungst on 22 February 2017 is attributable to the accident and believes that it probably represented a chronic finding from previous ankle injuries.

40.10 His overall conclusion is that:

> *"At worst therefore, one could consider that the accident exacerbated the symptoms of pre-existent problems in her ankle and on balance therefore, the claimant was always likely to suffer the issues related to her ankle joints, even in the absence of the accident in question. Estimating the degree of exacerbation is difficult due to the time elapsed and all the subsequent intervention that has occurred between the original injury and my examination but I would cautiously estimate a period of between 2-5 years. …*
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> *… I do not believe this claimant's current level of disability is explained by any orthopaedic foot and ankle pathology, nor by any lumbar spine pathology where MRI scans have not identified any nerve root compression. On this basis, I can find no orthopaedic reason why the claimant is so seriously disabled at the present time. I can see no reason why the claimant would not be able to undertake her normal work. It is possible that she would have mild ankle discomfort on prolonged walking, but I would not expect mechanical type orthopaedic joint pathology to disable her to the degree that she currently reports nor to prevent her from fulfilling her normal work activities."*

41. In his supplemental report, addressing the causation issues more explicitly, Mr Hepple concludes:

41.1 The orthopaedic / mechanical element of the Plaintiff's injury would not have disabled her from work for any substantial period. Mr Hepple notes that the worst effects are usually immediate and yet the Plaintiff did not take any time off work in the immediate aftermath of the accident.

41.2 Dr Yungst's surgery on the Plaintiff's ankle was well intentioned, but in retrospect was unhelpful, which is demonstrated by the failure to have any positive effect on the Plaintiff's symptoms.

41.3 It was reasonable for the Plaintiff to take up to 3 months off work to recover following the first surgery performed by Dr Yungst and up to six months following the second operation.

41.4 The Plaintiff's prolonged absenteeism from work since the surgery performed by Dr Yungst is not related to her orthopaedic injuries.

D. Causation and contributory negligence

42. Mr Davies argues that the actions of Dr Yungst break the chain of causation, and that therefore I should ignore the two surgeries that he performed when assessing the appropriate award of damages for the Plaintiff. The difficulty for the Defendant's argument, however, is that Mr Hepple does not criticise Dr Yungst, far less does he suggest that he made an error. Instead, Mr Hepple says that his actions were "reasonable", albeit did not achieve an improvement for the Plaintiff. In my judgment, there is no break in the chain of causation. The Plaintiff is entitled to include within her claim the fact that she underwent two arthroscopy operations on her ankle in an attempt to resolve the problems about which she was complaining.

43. The Defendant makes seven pleaded allegations of contributory negligence, as follows:

43.1 the Plaintiff entered the car park when she knew or ought to have known it was unsafe so to do, thereby exposing herself to a risk of harm;

43.2 the Plaintiff failed to give any due care or proper consideration to the prevailing weather conditions at the time;

43.3 the Plaintiff caused or permitted the relevant steps to be wet by transference of water from her own shoes;

43.4 the Plaintiff failed to make full and proper use of one or other of the handrails so as to prevent herself from falling if she lost her footing;

43.5 the Plaintiff failed to take care as to how and where she placed her feet on the stairs;

43.6 the Plaintiff descended the stairs in such a manner so as to lose her footing and fall;

43.7 the Plaintiff failed adequately to observe, heed or act upon or avoid the wet stairs.

44. The Defendant has not adduced any evidence to support any of its allegations of contributory negligence. In cross-examination, Mr Davies focused on the fourth allegation and an unpleaded allegation that the Plaintiff was rushing.

45. The first allegation made by the Defendant is wholly unparticularised. It is completely opaque why the car park is said to have been unsafe and what is the risk of harm to which the Plaintiff is said negligently to have exposed herself. Assuming, in the Defendant's favour, that this is intended to be a reference to the rainwater on the stairs and the risk of slipping as a result, I do not consider that a reasonable user of the stairs would have thought that it was likely to be unsafe to walk down the stairs because of the presence of rainwater, given that the steps are made of concrete and do not have a polished, smooth or tiled surface. Further, I do not consider that a reasonable user would have believed that there was a significant risk of suffering a slipping accident as a result of the presence of rainwater on the stairs. I reject this allegation.

46. The Defendant does not suggest what the Plaintiff should have done, and the allegation was not put to the Plaintiff in cross-examination. There is no evidence that the Plaintiff failed to give proper consideration to the fact that it was raining. I dismiss it.

47. I cannot see how it can sensibly be alleged that the Plaintiff's accident was caused or contributed to by the water that was already on her shoes, in circumstances where the Defendant has failed to adduce any evidence contrary to that of the Plaintiff that there was water on the stairs from the rain which had been raining all morning. In addition, it was not put to the Plaintiff in cross-examination. I reject this allegation.

48. The allegation that the Plaintiff failed to hold the handrail was put to her. She denied it. She said she was holding on to the handrail, but that it was poorly positioned for the first few steps, was too low, and did not save her from falling. The Defendant has not adduced any evidence to contradict the Plaintiff's evidence. I reject this allegation.

49. The allegation that the Plaintiff failed to take adequate care when placing her feet on the stairs was not put to the Plaintiff in cross-examination. I dismiss it.

50. The allegation that the Plaintiff descended the stairs in such a way as to lose her footing is wholly unparticularised. It was not put to the Plaintiff in cross-examination. I dismiss it.

51. Similarly, the allegation that the Plaintiff failed to heed and to act upon the fact that the stairs were wet is wholly unparticularised. There is no pleading as to what it is that the Plaintiff should have done. It was not put to the Plaintiff in cross-examination. I dismiss it.

52. Finally, as mentioned already, Mr Davies put to the Plaintiff an unpleaded allegation that she slipped because she was rushing. The Plaintiff rejected this. There is no evidence that she was rushing. I dismiss the allegation.

E. Damages

E.1 The appropriate uplift to any award of general damages

53. The parties referred me to *Archer v UBS (Cayman Islands) Ltd* [2009] CILR 531 as authority that when assessing general damages, the Court should be guided by previously decided cases in England and Wales, and also that the awards in such cases should be increased by about 10% to reflect the higher cost of living in the Cayman Islands. In that case, Quin J said at [52]:

> *"... This court traditionally follows English case law, the helpful authorities contained in Kemp & Kemp and the guidelines from the Judicial Studies Board with a small increase to reflect the higher cost of living in the Cayman Islands. It is my view that this court can take judicial notice of the fact that we have no income tax, and therefore the cost of living is higher than in the United Kingdom."*

54. With respect to Quin J, the last sentence of the passage quoted seems to me to be a *non sequitur*. It may be that Quin J intended to say or mean that the cost of living in the Cayman Islands is substantially higher than the UK because of import duty charged on items brought into the Islands,

which provides one of the routes by which government raises money instead of imposing income tax, but it does not seem to me that the higher cost of living is a direct consequence of the absence of income tax.

55. In any event, Quin J did not provide any explanation in his judgment of how the uplift should be determined. He simply stated the amount of the award that the plaintiff in that case should receive. Mr Murray and Mr Davies informed me that the general rule applied in the Cayman Islands is to apply a 10% uplift to English awards.

56. I was not referred by counsel to the more helpful case of *AX v A, B and C* [2016] 2 CILR 150, where the question of the uplift was considered in more detail by Swift Ag J. He said this at [15] and [16]:

> *"15. ... the plaintiff submits that a 20% uplift in the damages is appropriate to reflect the suggested higher cost of living in the Cayman Islands in contrast to the United Kingdom and seeks to uplift the suggested award to CI$260,000. The plaintiff seeks to justify that increase by relying on the local case of Archer v UBS (Cayman Islands) Ltd., in which Quin, J. upheld an increase on that basis. ...*
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> *Although there was no statistical or other evidence before the judge in that case in support of the suggested uplift, or indeed of any uplift, the judge took 'judicial notice' of the higher cost of living here in Cayman and expressed the uplift as part of the traditional approach. However it is not clear from that decision what the actual percentage uplift applied by the learned judge in fact was. The defendants have referred me to the decision of the CICA in the case of Chin v Yates [(2014 2 CILR 196] in which the Court of Appeal referred to the decision in Archer, saying, at para. 19):*
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> > *'[The judge] then followed Quin, J.'s approach [in Archer] and uplifted the award to $80,000. There has been no challenge to the making of an uplift, which is done to reflect the higher cost of living in the Cayman Islands.'*
>
> *It was not suggested obiter that this approach might have been wrong. Whilst it is not clear what percentage uplift was applied by Quin, J. in Archer, the uplift in Chin at first instance was from $74,102.50 to $80,000, an increase of approximately 7.5%. The defendants have also referred me to the decision in Wilson v Ebanks, where Smellie, C.J., when dealing with the assessment of damages in a brain injury case, was referred to the Judicial Studies Board Guidelines for the assessment of damages in personal injury cases (the predecessor of the current Guidelines) and, in a detailed and carefully constructed ruling, made no reference to any jurisdictional uplift saying only (2011 (1) CILR 447, at para. 27):*
>
> > *'Of course, as a judge assessing damages in this jurisdiction which has its dissimilarities with England and Wales, I am obliged to consider the appropriateness of a simple straightforward adoption of awards from that jurisdiction.'*
>
> *Later, when dealing with the increase in awards in catastrophic injury cases that followed the decision in the leading case of Heil v Rankin, the learned Chief Justice said (ibid., at para. 30):*
>
> > *'Having regard to our traditional reliance on the common law as developed in England and Wales for guidance in this jurisdiction, I am satisfied that the Guidelines, as they reflect the decided cases, can indeed be an essential tool in the assessment of general damages in this jurisdiction as well. However, as the introduction to the 10th edition emphasizes, the authors of the Guidelines do not attempt to prescribe what levels of damages ought to be awarded- rather, to set out what they consider to be the current level of awards and settlements adjusted where necessary for inflation. It thus remains for the judge in every case to exercise his judgment by examination of the circumstances of the*

> *case by reference also to the decided cases and say what the actual amount of the award should be.'*
>
> *It seems to me that, in the same way that judges in this jurisdiction may adjust levels of awards in reported cases or in the Guidelines to account for upward inflationary pressure, so equally they may properly take into account the obvious differences in the cost of living between the United Kingdom and the Cayman Islands. Such adjustments, reflecting one aspect of the 'dissimilarities' between the Cayman Islands and England and Wales referred to by the Chief Justice, are perhaps so well established as to have become traditional in the sense of that word as used by Quin, J. in Archer and as such are usually taken into account by judges in this jurisdiction without the need ordinarily to make specific reference to the fact that an uplift has been applied. ...*
>
> *16. I shall apply a 10% increase from the plaintiff's starting point following the 'traditional approach' ... The increase I have applied is slightly above that applied in Chin but less than the plaintiff claims (I can find no authority for an uplift of 20%) and is intended to provide a clear guide to the general approach to the application of UK levels of damages in this jurisdiction. ..."*

57. As I indicated to counsel during oral argument, an uplift of 10% does not seem to me to be an accurate reflection of the current difference in the cost of living between the UK and the Cayman Islands. The Cayman Islands are recognised to be one of the most expensive places in the world to live, with one recent survey suggesting that they are the third most expensive country. Depending on what is being compared, the difference between the cost of living in the Cayman Islands and in London, UK, appears to be between about 21% and 44%.

58. It may be that the time has come for a re-evaluation of Swift Ag J's adoption of a 10% uplift to reflect the differences between the cost of living in the Cayman Islands and in the UK. However, in the absence of proper evidence and full argument on this point, it would be inappropriate for me to take a different approach in this case from the established practice of applying a 10% uplift.

E.2 General damages - pain, suffering and loss of amenity

59. I now turn to the question of the appropriate award for the Plaintiff's pain, suffering and loss of amenity.

60. In light of the medical evidence, I agree with Mr Davies' submission that the Plaintiff's award of general damages should not include her back problems, which are not established on the balance of probabilities to be causally related to her slipping accident.

61. However, as indicated earlier in this judgment, I consider that the award to the Plaintiff should reflect that she underwent two operations under Dr Yungst's care in an attempt to improve her condition, notwithstanding that those operations did not in fact have that result. The evidence before me indicates

that the Plaintiff underwent the first arthroscopy under general anaesthetic and underwent the second one under local anaesthesia. In my experience, the need for a claimant to undergo surgery is treated as an aggravating factor when assessing general damages, with a consequent uplift in the award, even if the claimant then makes a full recovery from the injury in question. This is particularly so where the surgery is performed under general anaesthetic, rather than local anaesthetic.

62. Mr Murray argues that the documents in evidence from the medical insurers who funded the majority of the Plaintiff's medical expenses demonstrate that the Plaintiff had to have extensive treatment to her ankle, involving an extended course of physiotherapy. Mr Murray submits that this takes the Plaintiff's injury outside the "minor" category on which the Defendant relies. He draws my attention to the Irish *Judicial Council Guidelines* and says that I should treat the Plaintiff's ankle injury as being within the "moderate" or "serious" brackets within those Guidelines.

62.1 The "serious" bracket is described as:

> *"Injuries necessitating an extensive period of treatment or where pins and plates have been inserted and there is significant residual disability in the form of ankle instability and severely limited ability to walk."*

This bracket would attract an award between about €45,000-€70,000, roughly equivalent to CI $39,000-60,500 at current exchange rates

62.2 The "moderate" bracket is described as:

> *"Fractures, ligamentus tears and the like which give rise to less serious disabilities such as difficulty in walking on uneven ground, difficulty standing or walking for long periods of time, difficulty in negotiating stairs, irritation from metal plates and residual scarring. There may also be a risk of future osteoarthritis."*

A case within this bracket would justify an award of between about €20,000-€45,000, or CI $17,000-$39,000 at current exchange rates.

62.3 Below those two brackets, the *Judicial Council Guidelines* provide the following guidance for Irish judges:

> *"**Minor ankle injuries***
>
> *Less serious, minor or undisplaced fractures, sprains and ligamentus injuries.*
>
> *(i) Where a substantial recovery or a recovery to nuisance level takes place without surgery within two to five years. This bracket will also apply to shorter term acceleration and/or exacerbation injuries usually between two and five years. €12,000-€20,000*
>
> *(ii) Where a substantial recovery takes place without surgery between six months and two years. This bracket will also apply to very short-term acceleration and/or exacerbation injuries, usually less than two years. €6,000-€12,000*
>
> *(iii) Where a substantial recovery is made within six months. €500-€6,000"*

Those brackets equate to about CI $10,500-$17,500, CI $5,200-$17,500 and CI $435-$5,200 respectively.

63. Mr Davies relies on the English *Judicial College Guidelines (17th edition)* published on 1 May 2024. He reminds me that these are guidelines, not tramlines, and that every case depends on its own particular facts. He contends that the Plaintiff's ankle injury falls within the "modest injuries" category of ankle injuries.

63.1 The "modest injuries" bracket is described in the *Judicial College Guidelines* as being appropriate for:

> *"The less serious, minor or undisplaced fractures, sprains, and ligamentous injuries. The level of the award within the bracket will be determined by whether or not a complete recovery has been made and, if recovery is incomplete, whether there is any tendency for the ankle to give way, and whether there is scarring, aching or discomfort, loss of movement, or the possibility of long-term osteoarthritis.*
>
> *Where recovery is complete without any ongoing symptoms or scarring, the award is unlikely to exceed £9,390. Where recovery is complete within a year, the award is unlikely to exceed £6,710. Modest injuries that resolve within a short space of time will attract lower awards."*

The top of this bracket is said to justify an award of up to £16,770, or about CI $17,500 at current exchange rates.

63.2 For comparison, the next bracket above this one in the English *Judicial College Guidelines* is "moderate", described to be applicable to:

> *"Fractures, ligamentous tears and the like which give rise to less serious disabilities such as difficulty in walking on uneven ground, difficulty standing or walking for long periods of time, awkwardness on stairs, irritation from metal plates, and residual scarring. There may also be a risk of future osteoarthritis."*

The appropriate figures for this bracket are £16,770 to £32,450, equivalent to about CI $17,500 to $33,835.

64. I note that the English *Judicial College Guidelines* do not include any indication whether allowance is made within those Guidelines for whether the claimant had to undergo surgery, whilst the Irish *Judicial Council Guidelines* explicitly refer to this. I also note the general preference for using the *Judicial College Guidelines* expressed in *Archer*, *AX* and the cases referred to within the passage that I have quoted from *AX*.

65. The intention behind the Judicial College Guidelines is to reduce the reliance on previously decided cases, and to avoid the need for excessive citation of other examples of awards. Nevertheless, I accept

that there is some value in using previously decided cases as a cross-check that the bracket is being appropriately applied.

66. Accordingly, Mr Davies relies on five English cases from *Kemp & Kemp* to provide comparisons with the guidelines, as follows:

66.1 *Parsons v Pitt* (17–045) – This is a case from May 2001. The claimant was a lady aged 43, who sustained an inversion injury to her right ankle whilst walking on an uneven forecourt. She was seen in hospital and was thought to have suffered a fractured fibula. She was given a plaster cast. Subsequent x-rays did not show any fracture. The claimant was in the plaster cast for four weeks, then used a supportive bandage for a further two weeks. When examined two years after the accident, the claimant complained of intermittent aching. She also suffered from unrelated fibromyalgia. The orthopaedic evidence suggested that the pain and suffering caused by the accident was limited to a six-month period and thereafter the claimant's sequelae were caused by her fibromyalgia. The value of the award updated for inflation to November 2024 is about £4,940.

66.2 *Layland v Creative Print & Design Ltd* (17–044) – This is a case from December 2005. The claimant was a lady aged 31, who was struck by a reversing pallet truck at work. She was taken to hospital and diagnosed with soft tissue injuries to her left ankle, left knee and lower back. She was absent from work for three months and underwent eight sessions of physiotherapy. She had fully recovered from the injuries to her back and knee after about 3 months. She was left with residual pain in her ankle. She was able to return to her hobby of dancing after six months. When examined roughly 10 months after the accident, she had made a substantial improvement. She complained of discomfort in her left ankle in the morning and in cold weather. Wearing high-heeled shoes was sometimes uncomfortable. Her ankle would swell at the end of a long day at work, but she did not complain of any functional restrictions. She had a full range of ankle and foot movement. Her mild intermittent symptoms were predicted to resolve completely by one year after the accident. At trial, two years after the accident, she continued to complain of minor symptoms which the judge attributed to the accident. The claimant was awarded the equivalent of £5,540, uplifted for inflation to November 2024.

66.3 *Gott v Gainmild Ltd* (17–025) – This is from August 2002. The claimant was a lady aged 59, who sustained a fracture to the lateral malleolus of her left ankle. She was in a cast for six weeks and she was off work for nine weeks. The claimant was unable to undertake housework for five weeks and unable to socialise for six weeks. She was expected to make a full recovery

within 22 months of the accident, with the aid of physiotherapy. At the date of trial three years after the accident, the claimant's ankle still ached and felt as if it would give way. The value of the award as at November 2024 is £10,725.

66.4 *Appleton v Great Yarmouth BC* (17–015) – This is from October 2000. The claimant was a lady aged 64, who sustained a comminuted lateral malleolar fracture dislocation of her right ankle. The fracture was reduced and fixed under general anaesthesia. She was in hospital for a week. Her symptoms then improved until they reached a plateau about five months after the accident. By the time of trial, she still had some residual intermittent pain but could walk for half a mile without a rest, or one mile in total. There were early radiological signs of degenerative changes in the joint, attributable to the fall, with a 25-33% chance of gradually worsening symptoms and the consequent possibility of long-term arthrodesis. The claimant was no longer able to pursue her pre-accident hobbies of beach walking and visiting historic houses. The value of the award updated for inflation to November 2024 is about £17,540.

66.5 *Harding-Greig v Wireangle Ltd* (17–008) – This is from February 2003. The claimant was a lady aged 31, who suffered a fracture dislocation of her right ankle. The fracture was reduced under general anaesthetic and fixed using screws and wire. She was in hospital for six days and was on crutches, non-weightbearing on her ankle for a further five to six weeks. She attended a number of sessions of physiotherapy. She was off work for two weeks but was able to return due to the sedentary nature of her work, albeit initially on a part-time basis. Two years after the accident, the claimant was left with aching and stiffness in her ankle proportional to her level of activity. She also had occasional sudden sharp pains in her ankle when she stood on it awkwardly; and aggravation of symptoms on walking, particularly on uneven surfaces and after demanding activities or prolonged standing. She walked with a variable limp and described her efforts to run as being no more than a "fast hobble". She could no longer wear high heels or participate in her pre-accident hobbies of line dancing and clubbing. She was left with approximately half the normal range of ankle movements, with some wasting of her right calf muscles and swelling of her ankle. The surgery had left scars measuring 14 cm and 9 cm in length, which were a source of embarrassment. The restrictions and symptoms would be permanent and there was a 10% risk of post-traumatic arthritis during her working life. It was not anticipated that she would ever be able to return to the same level of physical activity. The value of the award as at November 2024 is approximately £33,575.

I note that none of these is a particularly recent decision: they are all from 2005 or earlier. There is a risk that they are no longer reflective of current levels of awards for injuries of the kind described,

even after allowing for inflation, since the assessment of awards for personal injuries is dynamic and changes over time.

67. Subject to that caution, I agree with Mr Davies' submission that *Harding-Greig* is a significantly more serious case than that of the Plaintiff, having regard to the nature of that claimant's injuries. I agree with him that *Appleton* is somewhat more serious than the Plaintiff's case, in that it involved a comminuted fracture and the long-term consequences for the claimant were more serious. Taking into account the Plaintiff's surgery and extended periods for recovery that Mr Hepple considers would be reasonable, *Gott* and *Layland* are less serious cases. I consider that *Parsons* is significantly less serious than the Plaintiff's case.

68. In the circumstances, based on the *Judicial College Guidelines* and considering the cases relied upon by Mr Davies as a cross-check, I prefer the figure for general damages for the Plaintiff's immediate injury of CI $19,375 proposed by the Defendant. This incorporates the 10% uplift on the value of the English guidelines and cases. In addition, I consider that the Plaintiff is entitled to additional compensation to reflect the Plaintiff's surgery and post-operative recovery. However, the Defendant's proposed figure of CI $7,751 in this regard is based on the guideline for ankle injuries where recovery takes place within 12 months and does not take into account that compensation for the Plaintiff is in respect of two operations, one involving general anaesthesia, rather than one incident with on exposure to anaesthesia. I consider that the figure proposed by the Defendant must be increased to CI $10,000 in this respect. I therefore award a total figure of CI $29,375 as general damages.

E.3 Loss of earnings

69. Mr Davies argues that the Plaintiff has not suffered any relevant loss of earnings as a result of her orthopaedic injuries. However, the Defendant accepts that if I conclude, as I have done, that the Plaintiff can recover in respect of the surgery that she underwent at Dr Yungst's hands, then the Defendant should pay CI $26,373.03 to reflect her net loss of earnings over the periods when she was unable to work attributable to her recovery from that surgery.

70. I agree with Mr Davies that the Plaintiff cannot properly make any wider recovery for loss of earnings, and so I award CI $26,373.03 as accepted by the Defendant.

E.4 Medical expenses

71. The documentary evidence includes a detailed statement of account from the Plaintiff's medical insurers setting out the expenses incurred in her treatment. Mr Davies has colour-coded the entries to identify: those accepted by the Defendant; those which the Defendant attributes to the Plaintiff's surgery; those which the Defendant says are related to the Plaintiff's ankle but are not orthopaedic in nature or immediate sequelae of the accident, for example because they relate to chronic regional pain syndrome; and those which are unrelated to the Plaintiff's ankle.

72. Mr Murray did not challenge the allocations proposed by Mr Davies, and so I adopt them. On this basis, the Defendant identifies CI $9,893.60 as being accepted, and CI $31,199.61 as relating to the Plaintiff's ankle surgery, which I find are causally related to the accident.

73. I therefore award CI $41,093.21 in respect of the medical expenses incurred by the Plaintiff.

74. In addition, the Plaintiff claims CI $8,200 in respect of a sum paid to Dr Marc Lockhart. The Defendant contests this on the basis that this appears to be a fee paid to Dr Lockhart for preparing a medical report dated 19 June 2024, which was served in December 2024. Mr Davies says that the Plaintiff did not have leave to obtain or rely upon any expert report from Dr Lockhart. Mr Murray did not challenge this explanation of the claim advanced.

75. As Dr Lockart's fee does not relate to medical treatment, it does not properly fall to be considered under this category of losses suffered by the Plaintiff. If it is recoverable at all, it should be treated as part of the Plaintiff's costs of the action. I therefore do not make any award of damages in respect of this claimed head of loss.

E.5 Care and assistance

76. The Plaintiff described this in her oral evidence as a being a claim to recover monies lent to her by her family. The bundle includes two letters, one from Ms Mary Borden, the Plaintiff's aunt, which describes loans made to the Plaintiff by Ms Borden from September 2020 onwards totalling CI $91,700, and the second providing details of further loans made to her by Mr Wenzil Burlington totalling CI $55,500. A large part of the money lent by Mr Burlington appears to have been used to buy a car.

77. The Plaintiff accepted in cross-examination that recovery of the loans from the Defendant would duplicate recovery of her alleged loss of earnings – since the loans were obtained to replace the earnings that the Plaintiff says she should have been receiving during 2020 and thereafter.

78. Damages for care and assistance are normally in respect of personal care and assistance with activities of daily living where that care and assistance has been given by family members to an injured person or paid care has been obtained. The Plaintiff did not receive any care or assistance with activities of daily living. It is therefore wrong to describe this claim as being for care and assistance.

79. In any event, as the Plaintiff accepted, this claim duplicates her claim for loss of earnings and the Plaintiff cannot make double recovery. Accordingly, I dismiss it.

E.6 Attorneys' fees

80. The Plaintiff's claim is for CI $137,770 in respect of fees that she owes to the various attorneys who have acted for her at different times during the course of this matter. Mr Davies objected to this claim on the ground that it should properly be characterised as a question of costs rather than damages. I agree with Mr Davies on this and do not make any award by way of damages. Subject to whatever costs order I make at the end of these proceedings, the route by which the Plaintiff will be entitled to make any appropriate recovery is through the mechanism for taxation of costs.

E.7 Interest

81. Mr Davies accepts that, in principle, the Plaintiff is entitled to interest on her claims at 2⅜% per annum. However, in light of my previous finding that the Plaintiff was guilty of inordinate and inexcusable delay in the prosecution of her claim, he submits that I should disallow interest over that period, totalling some 27 months.

82. In my judgment, it is not fair or just that the Defendant should have to pay interest for periods where I have concluded that the Plaintiff was guilty of culpable delay in advancing her case. I therefore accept the Defendant's argument and disallow interest for 27 months of the total period from the Plaintiff's accident to the date of judgment.

F. Conclusion

83. In summary, I award the Plaintiff's the following sums by way of damages:

Head of claim	**Award**
General damages - pain, suffering and loss of amenity	CI $29,375.00
Loss of earnings	CI $26,373.03
Medical expenses	CI $41,093.21
Care and assistance	CI $0
Attorneys' fees	CI $0
Total	**CI $96,841.24**

84. In addition, the Plaintiff is entitled to interest on her damages at 2⅜% per annum subject to 27 months being disallowed. I invite the parties to prepare and seek to agree an appropriate interest calculation.

85. Against this, I was told that the Defendant made an interim payment to the Plaintiff on 28 June 2022 of CI $20,000 to fund the Plaintiff's desire to undergo spinal cord stimulation therapy. The Plaintiff agreed at the time that this sum would be deducted from any final award that she received. Accordingly, the overall figure for damages stated above is subject to repayment of that figure by the Plaintiff along with interest on that sum at 2⅜% per annum from the date of payment.

86. I will hear the parties further on the issue of costs and any other consequential matters.

Dated 20 February 2025

THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT