

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN
3 CIVIL DIVISION

Cause No: G 414/2010
Legal Aid #:35/2010

7 BETWEEN:

8 HOWARD RIVERS

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10 PLAINTIFF

11
12 AND:

13 ALVIN WINSTON BROWN

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15 DEFENDANT



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18 Appearances:

Ms. Vanessa Allard of Brooks & Brooks for
the Plaintiff

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No appearance by or on behalf of the
Defendant

24 Before:

The Hon. Mr. Justice Charles Quin

25 Heard:

13th July 2012

26 Written Submissions:

27 Plaintiff's written submissions filed on the
20th July 2012

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No written submissions filed by the
Defendant

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JUDGMENT

33 1. On the evening of Friday the 16th November 2007 the Plaintiff was at Kelly's
34 Restaurant in West Bay, Grand Cayman, speaking to a female friend. The
35 Defendant approached the Plaintiff and confronted him "*with an attitude*". The
36 Defendant kept tapping the Plaintiff, urging the Plaintiff to "*do something do*

1 *something.*” The Plaintiff said he “*just wanted to chill out and relax*” and he turned
2 to walk away. After the Plaintiff turned away, the Defendant hit the Plaintiff with
3 his fist. The Plaintiff said the Defendant had big rings on four fingers of both hands,
4 like steel knuckles. The Plaintiff said the Defendant struck him on the right side of
5 the face, close to his right eye, causing the Plaintiff to fall to the ground. Whilst the
6 Plaintiff was lying on the ground the Defendant continued to hit him in his upper
7 back and kicked him in his side. The Plaintiff passed out. The next thing the
8 Plaintiff recalled was being taken to hospital; he was bleeding from his right eye
9 and he was in extreme pain.

10 2. The Plaintiff was treated by the Accident and Emergency Department of the George
11 Town Hospital and his treatment continued. The Plaintiff proceeded to have two
12 operations for a detached retina, and ultimately lost his sight in his right eye. His
13 right eye was removed and an ocular prosthesis was inserted in its place. The Court
14 has been greatly assisted by the medical reports submitted, and in particular, by the
15 reports of Dr. Jyotin C. Pandit (“Dr. Pandit”).

16 3. On the 27th November 2008 the Defendant was convicted of assault occasioning
17 grievous bodily harm in the Grand Court of the Cayman Islands and sentenced to a
18 period of imprisonment at HMPS Northward.

19 4. On the 9th November 2010 the Plaintiff issued a Writ and Statement of Claim for
20 personal injuries, loss and damage sustained by reason of the assault and battery
21 committed by the Defendant on the Plaintiff on the 16th November 2007.

22 5. On the 31st January 2011 the Plaintiff’s Writ of Summons and Statement of Claim
23 were served on the Defendant by the court bailiff. The Defendant did not file an

1 acknowledgment of service and he did not submit a notice of intention to defend the
2 action.

3 6. On the 24th February 2011 the Plaintiff obtained Default Judgment with damages to
4 be assessed.

5 7. On the 1st March 2011 the Plaintiff filed his Notice of Appointment for assessment
6 of damages.

7 8. On the 9th May 2011 the Plaintiff's Notice of Appointment for assessment of
8 damages, list of documents and bundle of documents were served on the Defendant
9 by the Bailiff. The Plaintiff attempted to have this matter heard on several
10 occasions.

11 9. On the 17th February 2012 the Defendant was served with the Notice of
12 Appointment for assessment of damages to be heard on the 13th July 2012.

13 10. On the 13th July 2012 the Plaintiff and Dr. Pandit, who was the lead consultant
14 ophthalmologist at George Town Hospital, gave evidence before this Court.

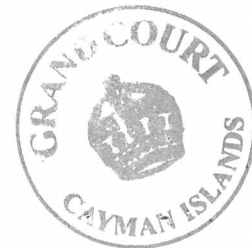
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DR. PANDIT'S FINDINGS

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11. Dr. Pandit saw the Plaintiff on the evening of the 16th November 2007. He found the Plaintiff orientated and cooperative. His visual acuity had deteriorated significantly to hand movements in the right eye and 20/200 vision in the left eye.
12. The Plaintiff had suffered a right upper and lower eyelid oedema and bruising, and a large subconjunctival hemorrhage in the right eye. In addition, there was a skin laceration just above the right eye. Dr. Pandit's evidence was that these traumatic injuries to the right eye and to the Plaintiff's face were consistent with blunt trauma, such as being hit in the face with a glass bottle.
13. Dr. Pandit told the Court that upon examining the Plaintiff he found an incomitant right esotropia. Dr. Pandit said that aphakic eyes are known to be susceptible to developing retinal detachments after traumatic injuries including ocular surgery. Dr. Pandit said the injuries to the globe and the skin were consistent with the history given by the Plaintiff, and he was admitted to the medical ward for observation in case there had been any intracranial bleeding.
14. A CT scan of the brain and the orbis were performed on the 17th November 2007 but did not show any significant abnormality on the brain or the orbis and the Plaintiff was discharged from the ward to return to the eye clinic for review.
15. The Plaintiff was reviewed later in November 2007 and in December 2007. The Plaintiff returned on the 19th December complaining of gradual deterioration in his vision in the right eye. Dr. Pandit confirmed that the Plaintiff's visual acuity was restricted to hand movements in the right at 20/200 and the left eye unaided.

1 26. Dr. Pandit confirms that before the Plaintiff obtained the new shell ocular
2 prosthesis, the Plaintiff's eye was extremely unsightly and caused a great loss of
3 self confidence. However the new shell ocular prosthesis has fitted well and both
4 the Plaintiff and Dr. Pandit consider this a success.

5 **GENERAL DAMAGES**

6 ***PAIN, SUFFERING AND LOSS OF AMENITIES***



7 27. The Court has been greatly assisted by the 10th Edition of the *Judicial Studies*
8 *Board Guidelines for the Assessment of General Damages and Personal Injury*
9 *Cases (Kemp & Kemp) ("The JSB Guidelines") February 2012 JSB 016.*

10 28. The Guidelines were updated in February 2012 and provide for ranges of awards
11 for loss of sight in one eye, with reduced vision in the remaining eye, with an upper
12 limit of £123,380.00 and a lower limit of £66,940.00.

13 29. In *Kemp & Kemp Quantum of Damages* at paragraph E1-006 the learned editors
14 cite the case of *Re Wiltshaw* heard on the 3rd November 1989. The Plaintiff
15 suffered a penetrating injury to the left eye, leaving him blind in the left eye and
16 sympathetic ophthalmitis – reducing visual acuity in the right eye. The Court
17 awarded general damages in the sum of £80,000.00 for pain, suffering and loss of
18 amenities.

19 30. The learned editors of *Kemp & Kemp* at paragraph E1-008 cite *Re Warren*, a case
20 heard on the 22nd February 1993. The Plaintiff suffered a detachment of the retina
21 of the left eye, with severe reduction in visual acuity, and the Court awarded
22 general damages in the sum of £70,000.00 for pain, suffering and loss of amenities.

- 1 31. I have been impressed by the candid and factual way in which the Plaintiff gave his
2 evidence. He has not endeavoured to embellish the seriousness of his injuries or
3 their consequences. In fact, he has presented his evidence in a very stoic and matter-
4 of-fact manner when addressing the injuries he sustained and their consequences.
- 5 32. However, this is clearly a serious injury which caused considerable pain for a
6 number of years. To lose the sight in one eye can only be described as an extremely
7 serious injury – one that had a detrimental effect on the Plaintiff’s ability to work
8 and enjoy life for the rest of his days. In addition, the Plaintiff’s ability to socialize
9 has been detrimentally impaired and his leisure activities have been extremely
10 curtailed.
- 11 33. The Plaintiff has lost sight in his right eye and there is a risk of further deterioration
12 in the remaining eye, with a further risk of sympathetic ophthalmia.
- 13 34. I have heard the Plaintiff and Dr. Pandit describe the effect of the injury on the
14 Plaintiff, and also the extent of the pain, suffering and loss of amenities the Plaintiff
15 has suffered. I have read the cases of *Re Wilthshaw* (1989) and *Re Warren* (1993)
16 cited in *Kemp & Kemp* E1-006 and 008, and I find that the Plaintiff’s injuries are
17 within the higher and lower limits as set out in the February 2012 *JSB Guidelines*,
18 and referred to in paragraphs 30 and 31 of this Judgment. Accordingly, I have
19 decided to award CI\$125,000.00 for pain, suffering and loss of amenities.

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SPECIAL DAMAGES

PAST LOSS OF EARNINGS

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35. I note that in 2009 the Plaintiff had just prepared a business plan for his new company “Blue Ocean Water Sports” and had secured a number of very promising contracts. Regrettably, this assault and battery occurred just as the Plaintiff was starting his new business. However, from the evidence before this Court I find that before the Plaintiff was assaulted by the Defendant, the Plaintiff had an excellent work record and was earning between CI\$500 and CI\$800 per week, plus tips, with Mr. Allan Ebanks (“Mr. Ebanks”) of 203 Birch Tree Hill Road, West Bay.

36. Mr. Ebanks confirmed that the Plaintiff worked with him for approximately 8 years. He describes the Plaintiff as an all round worker, capable of being boat captain, boat mate, Sting Ray handler and assisting with the repairs, maintenance and painting of the boats.

37. The Plaintiff in his evidence stated that besides his earnings as stated above, at Christmastime tips were high, but at other times tips were low. The Plaintiff also said that during the hurricane season tips were very low and sometimes there were no tips at all.

38. In light of the evidence of the Plaintiff, the evidence of Mr. Ebanks and the documentary proof of his earnings, I award CI\$650.00 per week. Accordingly, for the period from 16th November 2007 to the 13th July 2012 – some 243 weeks at CI\$650.00 per week – I order CI\$157,950.00 as pre-trial lost earnings.



1 *FUTURE LOSS OF EARNINGS*

2 39. Based on the sum of CI\$650.00 per week, the Plaintiff's annual income can
3 realistically be expected to be at least **CI\$33,800.00** per annum.

4 40. The English Courts and the Cayman Courts have relied upon the *Ogden* tables
5 which were first introduced in the United Kingdom in 1984. The learned Editors of
6 *McGregor on Damages*, 17th Edition, 2003, stated at paragraph 35-056 on page
7 1200:

8 *"For the House of Lords in Wells v. Wells [1999] 1 A.C. 345 apart from its*
9 *famous prescription of a new discount rate, laid down equally famously, that*
10 *the rate was to be revised from, and by use of, the Ogden Tables. Lord Lloyd*
11 *put it beyond further argument. "The Tables", he said, "should now be*
12 *regarded as the starting point rather than a check". And he added by way of*
13 *warning; "A judge should be slow to depart from the relevant actuarial*
14 *multiplier on impressionistic grounds." Moreover, it is implicit in the speeches*
15 *of Lord Steyn and Lord Hope that they agreed. Thus the Ogden Tables have*
16 *triumphed. They are now established in the damages lexicon, the order of the*
17 *damages day and a prerequisite for the damages calculation."*

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19 41. The Grand Court has consistently applied the Ogden Tables as set out by the former
20 Chief Justice Harre in *Allan v. Ebanks* (1998) CILR at 197 and myself in *Archer v.*
21 *UBS* (2009) CILR at page 548 to 549.

22 42. Counsel for the Plaintiff has helpfully provided the Court with the 7th Edition of the
23 *Ogden* Tables 2011 and submits that at a minimum the Court should accept that the
24 Plaintiff would not retire before he is 70 and possibly even 75. Counsel for the
25 Plaintiff submits that a multiplier of 19.36 would apply for the 42 year old Plaintiff,
26 to retirement age of 70 and for the Plaintiff retiring at 75 the multiplier is listed at
27 21.31.

1 43. It is clear from the medical evidence that the Plaintiff's injuries are permanent.
2 However, there is no evidence before this Court that there is elevated risk of an
3 early death due to the Plaintiff's injuries.

4 44. In *Hydes v. Ebanks* (2002) CILR at page 249 the Court of Appeal agreed with the
5 learned Chief Justice and set the retirement age at 65. In *Bodden v. Solomon* (2008)
6 CILR 385 Henderson J. also found the reasonable retirement age to be 65. Having
7 considered the Plaintiff's position, and the dicta of *Hydes v. Ebanks* and *Bodden v.*
8 *Solomon*, I also find that 65 is a reasonable retirement age for the Plaintiff in this
9 case.

10 45. In all the circumstances of this case I find that a multiplicand of 17 for the Plaintiff,
11 who is 42 years of age, is fair and reasonable. Based on the calculation of his
12 income of CI\$650.00 per week, equalling CI\$33,800.00 per year, multiplied by 17,
13 totals **CI\$574,600.00**. Accordingly, I award the Plaintiff the sum of CI\$574,000.00
14 for post-trial earnings.



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SMITH V. MANCHESTER

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46. It is clear from the evidence of the Plaintiff and Dr. Pandit that the Plaintiff is no longer able to continue to work as a water sports operator. Furthermore, Dr. Pandit has stated that the Plaintiff is unsuitable for employment that requires balance, keen eyesight, the use of stairs and ladders, as he has lost his stereo vision and binocularity and is therefore a danger to himself, and others.

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47. The Cayman Islands Court of Appeal in *Hydes v. Ebanks* 2002 CILR at page 250 set out the principles to taken from the case of *Smith v. Manchester Corp.* [1974] 17 K.I.R. 1; sub nom *Smith v. Manchester City Council* 118 Sol Jo 597. The then President Edward Zacca PC stated:

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“(a). If the Plaintiff, on a balance of probabilities, is likely to lose his job for whatever reason, and is less likely to obtain a comparable new job, he is entitled to a Smith v. Manchester Corp. award. (b) If the Plaintiff is unemployed and remains unemployed, he can get a Smith v. Manchester Corp. award if he can show that his disability, and not economic conditions, is the cause or a potential cause of his failure to get a job. (c) A weakening of the Plaintiff’s competitive position in the open labour market must be shown. What are the Plaintiff’s chances of gaining employment in the open labour market? (d) No annual sum is to be used in the assessment. (e) No multiplicand and multiplier number of years is to be used. (f) The Judge is to look at the weakness “in the round” and give an estimate. (g) There must be a real or substantial risk as opposed to a “speculative or fanciful” risk. (h) If the Court comes to the conclusion that there is no substantial or real risk of the Plaintiff losing his present job in the rest of his working life, no damages should be awarded under this head.”

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48. There is evidence from the Plaintiff that he has made serious attempts to work in other occupations including supermarkets and in the janitorial domestic services industry, but, regrettably, all to no avail.

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1 49. I am satisfied from the evidence of both Dr. Pandit and the Plaintiff that it is highly
2 unlikely that he will ever be able to obtain a job which is comparable with his
3 former job with Mr. Ebanks as a Water Sports Operator.

4 50. Accordingly, in assessing the disability caused by the accident, and all the
5 circumstances, I deem it fair and reasonable to award **CI\$15,000.00** under the
6 *Smith v. Manchester* principles.

7 *HOME CARE*

8 51. The evidence before the Court is that as a result of the injuries he sustained in the
9 assault, the Plaintiff has great difficulty in performing simple household tasks. I
10 find, from the evidence given by the Plaintiff and Dr. Pandit that, on a balance of
11 probabilities that the Plaintiff will require home care.

12 52. In *Archer v. UBS* the Court awarded the sum of CI\$50.00 per day for one day per
13 week for one year – which was a subtotal of CI\$2,600.00. With the multiplier of 17,
14 in this case, I award the sum of CI\$44,200.00 under this heading.

15 *PAST MEDICAL EXPENSES*

16 53. The Court notes that the Plaintiff has provided all receipts for his out of pocket
17 expenses, which total the sum J\$207,264.90 which converts to CI\$1,839.60 for
18 travel to Jamaica for his hospital visits.

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FUTURE MEDICAL COSTS AND EXPENSES

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54. The evidence of Dr. Pandit is that the Plaintiff will need to be reviewed by his
doctors every six months. I note that CINICO Health Insurers usually cover the cost
of airline tickets to Jamaica to see his consultant. Counsel on behalf of the Plaintiff
states that he will be required to find US\$150.00 every six months. It is likely that
this will continue for the rest of his life. Accordingly, I award him, based on
US\$300 per year multiplied by 17, US\$5,100.00 for future medical costs and
expenses.

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CONCLUSION



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55. Accordingly the Plaintiff is awarded the following sums:

Item		US\$	CI\$	CI\$	J\$	CI\$
General Damages			\$125,000.00			
Special Damages (SD)						
	SD Past Loss of Earnings			\$157,950.00		
	SD Future Loss of Earnings			\$574,600.00		
	SD <i>Smith v. Manchester</i> award			\$ 15,000.00		
	SD Home Care			\$ 44,200.00		
	SD Past Medical Expenses			\$1,839.60	\$207,264.90	
	SD Future Medical Expenses	\$5,100.00		\$4,182.00		
Sub Total for SD				\$797,771.60		
Grand Total						\$922,771.60

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1 56. I therefore award the Plaintiff the sums of CI\$125,000.00 for general damages and
2 CI\$797,771.60 for special damages, making a total of CI\$922,771.60 and interest
3 thereon, to be included in the final order.

4 57. In light of the fact that costs follow the event I order that the Plaintiff is to have his
5 costs paid by the Defendant, to be taxed if not agreed. In addition, I order that the
6 Legal Aid fund be reimbursed from the costs paid by the Defendant.

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9 **Dated this the 19th December 2012**

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Honourable Mr. Justice Charles Quin
Judge of the Grand Court

