

IN THE SUPREME COURT OF BELIZE, A.D. 2018

CLAIM NO. 264 of 2018

MARCELINO UMAÑA

CLAIMANT

AND

CLYDE TASHER

1ST DEFENDANT

**JAMES HENRY ALEXANDER WILLIAMS JR.
(T/A JAMES BUS LINE)**

2ND DEFENDANT

BEFORE the Honourable Madam Justice Sonya Young

By Written Submission only

Written Submissions

Claimant – 4.7.2018

Decision

12.7.2018

Mr. Nicholas Dujon, SC for the Claimant.

Keywords: Default Judgment, Assessment of Damages – Negligent Driving – Personal Injuries – Whip Lash- Facial Laceration with Scarring – Fractured Scapula – Diminished Hearing – Laceration to ear and inner ear

JUDGMENT

1. More Tomorrow, on the 15th July, 2017, what could a destination by this name hold. Mr. Umaña was not to find out. His journey there was abruptly

disrupted when the back of his pickup was violently impacted by a bus belonging to the second Defendant. The bus was being driven by Clyde Tasher.

2. As a result of the collision Mr. Umaña received a laceration to the right ear and inner ear which caused him some deafness in that ear, a 3 cm wound to the right cheek bone which left scarring, a fractured right scapula and anterior depression of the 7th thoracic vertebrae consistent with whiplash fracture.
3. Pursuant to the default judgment entered in his favour, he now seeks to have his damages assessed. He claims for his medical expenses, his pick-up truck which was a total loss and general damages for his pain, suffering and loss of amenities.

The Medical Evidence:

4. Two medical reports were presented. The first from Dr. Peña an orthopedic and trauma surgeon who examined Mr. Umaña and prepared a written report on 27th March, 2018. This was about a month and a half after the accident.
5. He found that Mr. Umaña was deaf in the right ear and reported hearing a buzzing sound. He observed a scar on the right ear lobe. There was also a 3 cm scar on his face. He had difficulty elevating and rotating his right shoulder and could not fully extend his arm. The shoulder was still painful on palpation and movement.
6. Palpation of his spine incited pain at around mid-back. He perused the x-ray and noted a marked depression of the 7th thoracic vertebrae which coincided

with the painful area and was consistent with a whiplash fracture. He placed Mr. Umaña total percentage of affection at five percent.

7. The second report was from Dr. John Waight who assessed Mr. Umaña on the 12th June, 2018, just under one year after the accident. He too recorded scars to Mr. Umaña right side of face and ear, but diminished hearing only of the right ear, rather than deafness. He also observed a minor restriction of the range of movement of the right shoulder joint and localized tenderness to palpation of the mid-spine. The x-rays revealed that the right shoulder was within normal limits and there was diminution in the vertical height of the 7th thoracic vertebrae compatible with a compression fracture.
8. He explained that the shoulder had healed normally and the pain would diminish with time but more than likely with some permanent restriction of movement. The pain in the spine would be prolonged but would also decrease in severity with time. He assessed his permanent residual disability at ten percent and opined that the injuries would have prevented Mr. Umaña from engaging in his usual occupation in the dairy industry for a period of three months. What is immediately recognized is that Mr. Umaña shows positive overall progress.

Mr. Umaña:

9. He attested that he was seventy-two years old. He was seventy-one at the time of the incident. He is in the dairy business where he collects milk and makes cheese for sale fresh in the market. He said he felt a considerable degree of pain and was taken to the Western Regional Hospital where he stayed for three days. Even now he still experiences a lot of pain in the right shoulder and neck region especially whenever he attempts to lift anything

heavy. Since the accident he can no longer enjoy his hobbies of hunting and fishing.

10. He exhibits an unpaid medical bill in the sum of \$75.00 and a statement from Alexis Garage indicating the value of the truck to be \$13,000 and that it was damaged beyond repair.

Assessment:

11. The Court considered the evidence presented and the principles on which an assessment of this type is done. Counsel proffered a sum of \$35,000 to \$40,000 as general damages and provided the case of *Oscar Sanchez v Discoveries Geophysical Services Ltd. Claim No. 2015*. In that case \$65,000 was awarded for fracture of the clavicle and sternum, numbness in the foot and scarring caused by negligent driving of a vehicle in which the victim was a passenger.
12. This case is distinguishable by severity of injury and invasiveness of treatment. The clavicular fracture healed with a non-union and required surgery for internal fixation with plate and screw which had to eventually be removed because of the pain caused. He had to undergo four weeks of physiotherapy. He now has a heightened risk of osteoarthritis. The Court also notes as Counsel pointed out that Sanchez was twenty-eight years old whereas Mr. Carias is in his early seventies with encouraging prospects. With time he should be entirely pain free and capable of resuming work and enjoying a decent life.
13. The Court awards the sum of \$35,000 as general damages with interest at the rate of 6% from the 15th July, 2017 to the date of judgment herein.

Special damages are awarded in the sum of \$13,075.00 being \$13,000 for the loss of the motor vehicle and \$75.00 for medical expenses with interest at the rate of 6% from the 2nd May, 2018, the date of the filing of the claim to the date of judgment. Prescribed costs to the Claimant. I depend on counsel to calculate.

SONYA YOUNG
JUDGE OF THE SUPREME COURT