

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

CLAIM NO. 535 OF 2018

BETWEEN

RAYMOND GARBUTT

CLAIMANT

AND

FRANCIS B. MACAULEY

DEFENDANT

BEFORE the Honourable Madam Justice Sonya Young

Decision Date:

27th April 2022

Appearances:

Ms. Velda Flowers, Counsel for Claimant.

Defendant, Unrepresented.

**KEYWORDS: Default Judgment - Assessment of Damages - Personal Injury -
Vehicular Collision**

DECISION

1. This is a brief decision on the assessment of damages following default judgment for personal injuries and loss caused by a collision of the parties' vehicles through the negligent driving of the Defendant.

2. The Claimant claims special and general damages, interest, and costs.
3. Following the collision, the Claimant was hospitalized for one (1) night for pain to his chest and head at a cost of \$2,900.00 (receipt exhibited). His evidence is that on impact, his body slammed into the steering wheel. The Belize Police Force Medico-Legal Report Form, which he also exhibits, states simply that he complained of pain to the left side of his chest and to his head and he was admitted to the ward from the 20th to the 21st September, 2017.
4. Mr. Garbutt says that since discharge, he continued to experience discomfort and irregular heartbeats. He had never experienced this before the accident, and it is nerve wracking to endure as he feels he may one day have a heart attack.
5. For many weeks he was unable to sleep well because of the pain, discomfort and the mental stress caused by the experience.
6. He sought medical attention in the United States (USA), and despite all treatment received, he said he continued to experience the irregular heartbeat. In July 2018 he was eventually given a “*likely diagnosis*” of Post-Traumatic Osteochondritis by Dr. F. Cuellar. On the same date, Dr. Cuellar corrected this diagnosis to read Post-Traumatic Costochondritis. He offered no evidence on what this diagnosis entails, and none was sought by the Claimant.
7. His vehicle, a blue 2008 Jeep Patriot, was substantially damaged. According to the expert at Orellana & Sons Auto body - Frame Repair Shop, it could not be repaired. The extent of the damage and the cost of labour, parts, and body work made repair impractical. That expert also valued the vehicle at \$20,000.00.

THE ASSESSMENT

General Damages:

Nature and Extent of Injuries:

8. The Claimant spent a single night in the hospital which indicates that his injuries were not considered severe. He complained of head and chest pain caused by blunt force trauma. There is no indication of any treatment he received or whether he was to have follow up visits.
9. His evidence is that the pain and discomfort continued for many weeks. He started having irregular heartbeats, so he went to an internist, Dr. Cuellar, some ten (10) months after the incident.
10. Dr. Cuellar's report did not reveal any specific reason for the irregular heartbeat although he had undergone two (2) "*unremarkable*" EEGs. It seemed that there was no doctor who was able to find a reason for the irregular heartbeat or even proof of it, outside of what the Claimant reported.
11. The Court is of this view since nothing was provided by the Claimant except a report from Dr. Cuellar which failed to state a definitive diagnosis but rather, gave a '*likely*' diagnosis. This is sure proof that the good doctor remained uncertain of the true diagnosis. The doctors in the USA fared no better.
12. Dr. Cuellar, in his report, does not address the nature or gravity of any resulting disability. He does not speak to its effect on his ability to enjoy life or even his life expectancy. All this leads the Court to find that the injuries were mild only.

13. The Claimant says he continues to have this irregular heartbeat even at present and he is fearful of a heart attack. He does not speak to being limited in his daily life as his Counsel has submitted.
14. Counsel also submitted that he should be compensated for Post-Traumatic Stress Disorder. There is no evidence whatsoever of the Claimant having been diagnosed with this disorder. That submission is rejected in its entirety.
15. Her original submission for the injury to the chest placed a figure of \$16,894.35 or £6,500.00. On reconsideration, Counsel accepted that there was no expert evidence provided in relation to his injuries or about the diagnosis.
16. She further submitted that a sum of \$5,000.00 be awarded pursuant to **Section 5(1) of the Motor Vehicle Insurance (Third Party Risk Act), Cap 231**. With respect, this section deals with an obligation on the insurer and has nothing to do with an assessment of this nature.
17. I find the Claimant to have suffered only mild injury to his chest and some trauma to his head. He also has a likely diagnosis for the problems he says he is experiencing with his heartbeat. The Court awards an appropriate sum of \$3,500.00 as general damages for his pain and suffering (including distress). The Court considers this full and adequate in the circumstances.

Special Damages:

18. The expert evidence relating to the vehicle is accepted. The sum of \$20,000.00 is awarded. Although the Claimant spoke to being inconvenienced without his vehicle, there was no claim or submission made in this regard.

19. The Claimant has proven and will also recover the following:
 - i. \$200.00 for the Expert Report.
 - ii. \$2,900.00 for his hospitalization at the Belize Medical Associates.

20. Although he visited Dr. Cuellar, he does not provide any evidence whatsoever of the cost of that visit.

Determination:

1. General damages are awarded in the sum of \$3,500.00 with interest at the statutory rate of 6% from the date of judgment herein until payment in full.
2. Special Damages are awarded in the sum of \$23,100.00 with interest assessed at the rate of 6% from the date of filing of the Claim to the date of judgment and thereafter at the statutory rate of 6% per annum until payment in full.
3. Costs are awarded on the prescribed basis being \$4000.00 or 60% of the prescribed cost.

**SONYA YOUNG
SUPREME COURT JUDGE**