IN THE HIGH COURT OF BELIZE

CLAIM No. CV 135 of 2023

BETWEEN:

MARBELIO GONZALES

1st Claimant

MARLON DYCK

2nd Claimant

and

ATTORNEY GENERAL

1st Defendant

MINISTRY OF INFRASTRUCTURE, DEVELOPMENT AND HOUSING

2nd Defendant

ROLANDO ALCOSER

3rd Defendant

Appearances:

Mr Leeroy Banner for the applicants
Mr Stanley Grinage and Ms Imani Burgess for the defendants

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23 July 2024

3 February 2025

JUDGMENT

Tort – Personal injury – Motor vehicle accident – Contributory negligence – Special damages – General damages

[1] **HONDORA, J.:** This is a tort claim arising from a traffic accident that took place on 2 March 2022 involving a freightliner truck driven by Mr Ronaldo Alcoser (the third defendant) and a tractor driven by Mr Marbelio Gonzales (the first claimant). In the accident, the first claimant suffered life changing injuries consequent to which he seeks general damages for pain, suffering and loss of amenities for life and special damages for loss of income, medical expenses and other related expenses. The second claimant, who claims ownership of the tractor, which was destroyed beyond repair, sues for its loss. He also seeks damages for loss of income.

[2] The defendants, albeit belatedly, have admitted liability "*for the fact that the 3rd Defendant [Mr Alcoser] drover the Freightliner truck in a manner that exposed the 1st Claimant to a risk of injury, which he ought to have known was likely*." At the start of the trial, Crown Counsel Grinage stated that the defendants accepted that they were vicariously liable for the third defendant's actions that resulted in the traffic accident. In their written submissions, the defendants also indicated that they were no longer disputing that the first claimant suffered personal injuries and that the John Deere tractor was damaged because of the accident. In addition, the second defendant who initially counterclaimed for damages in relation to the damage caused to its freightliner truck later abandoned its claim. In addition, the third defendant who initially counterclaimed, later abandoned his claim "for pain, injury, suffering and loss of amenities".

[3] In their defence, the defendants pleaded contributory negligence, which they maintained throughout the proceedings. Relatedly, the defendants chose to neither admit nor deny the claimants' claim for damages. They requested that the claimants prove their claims, which is to the civil standard.

[4] This case raises the following three questions:

(a) whether the first claimant's actions contributed to the injuries, which he suffered on and as a result of the 2 March 2022 accident and if so, the impact, if any, on both claimants' claims for damages;

(b) whether the first claimant has demonstrated to the appropriate civil standard that he suffered the special and general damages, which he claims; and

(c) whether the second claimant has demonstrated to the appropriate civil standard that he suffered special damages, which he claims.

I. Contributory negligence

(a) Particulars of alleged contributory negligence

[5] In the defendants' written submissions, Crown Counsel argues that the first claimant contributed to the accident in that (and I paraphrase) the claimant:

(a) drove an unregistered and unlicensed tractor on the road;

(b) drove without due care and attention and failed to keep a proper lookout;

(c) illegally parked in the middle of the road and caused an unnecessary obstruction to the free flow of traffic and failed to keep on the right-hand side of the road;

(d) failed to keep to the right side of the road and failed to have any adequate regard for other road users or take any or any adequate precautions to avoid the collision;

(e) failed to take any or any adequate precautions to avoid the collision; and

(f) failed to discharge his duty of care to the third defendant.

(b) The law

[6] The test generally used to determine contributory negligence in the context of personal injury cases is that articulated by Lord Denning in ***Jones v Livox Quarries Ltd*** [1952] 2 QB 608 in which he stated:

> "A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might hurt himself; and in his reckonings he must take into account the possibility of others being careless."

[7] In ***Froom v Butcher*** [1975] EWCA Civ J0721-3, Lord Denning cited the ***Jones*** case and stated that:

> "Contributory negligence is a man's carelessness in looking after his own safety. He is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man he might be hurt himself."

[8] It follows that the test for contributory negligence is objective, and the court will use as a yardstick the reasonable person standard. As noted by Lord Denning in the passage cited above in ***Jones***, the assessment of whether the actions of a claimant contributed to the harm complained of requires the consideration of "*foreseeability of harm to oneself*" and whether the claimant's actions or omissions did in fact contribute to the harm suffered. In other words, causation must be demonstrated, i.e., to say, it falls on the defendant to demonstrate a causal link between the act of negligence alleged on the part of the claimant and the harm they suffered and for which they seek compensation.

[9] It is important to stress that the issue to be determined is not whether the claimant contributed

to the accident, which resulted in the injuries complained about. This appears (although I cannot say this with a great deal of confidence) to be the test articulated by the Court of Appeal in the case of ***Mai v Arana,*** Civil Appeal No. 33 of 2018 (see para. 48). Rather, the test is whether through their actions or omissions, the claimant contributed to the injury, which they suffered and in relation to which they seek damages (see ***Alvarenga v Hernandez***, Civil Appeal 15 of 2011 (BZ 2013 CA 8), at para. 66).

[10] To put this into perspective: a person "A" who is a passenger in a car driven recklessly by "B" resulting in an accident and serious head injuries to "A" may be found to have contributed to their injuries (although not responsible for the accident) if they did not wear a seat belt. On the other hand, if "A" would have suffered the same injuries even if they had been wearing a seat belt, the defence of contributory negligence would fail.

[11] In addition, because the plea of contributory negligence is a defence to a claim for alleged wrongdoing, the defendant bears the burden of demonstrating with cogent evidence that the claimant materially contributed to the harm for which they seek damages. The defence must be specially pleaded, and the defendant bears the burden of proof.

[12] Further, in determining whether on the facts a claimant was contributorily negligent and on the assessment of whether damages due to the claimant must be reduced to reflect their negligence, reference can be made to case law. However, caution should be exercised as each case must be determined on its own facts.

(c) Evidence and analysis

[13] In the claim form filed on behalf of the claimants by Messrs Myles & Banner, Attorneys at Law, it is stated that the freightliner truck, which was being driven by the third defendant:

> "…collided into the back of the John Deere Tractor which was parked off the main road on the right-hand side [of the tractor]". [Emphasis added]

[14] In his witness statement, the first claimant indicated that:

> "4. While I was driving down a hill on the main road in the Blue Creek Village, still travelling on my correct hand, I heard the sound of a heavy-duty truck coming behind me and it sounded like it was travelling very fast so I immediately turned around where I saw a Freightliner Truck coming down the hill at a high speed.
>
> 5. Upon seeing this, I immediately pulled completely off to the shoulder of the road but the Freightliner still collided into the rear of the tractor." [Emphasis added]

[15] The first claimant stated in cross-examination and in response to questions, which I put to him

that he did not park the tractor and that at all material times immediately leading to the accident the tractor was not stationary, i.e., to say, the tractor was in motion.

[16] Whether at the time of the accident the tractor was stationary and if so whether it was stationary in the middle or off the road is materially relevant to determining whether the injuries sustained by the claimant were caused in part by his own negligence, i.e., if he parked his tractor as alleged by the defendants in the middle of the road resulting in the collision with the out of control freightliner truck.

[17] In his statement to the police dated 5 March 2022, the third defendant (the driver of the freightliner truck) did not state that the first claimant's tractor was stationary in the middle of the road. He stated that:

> "Whilst coming down the hill with a load of gravel about 15 cubic yard *(sic)*. I started to applied brakes *(sic)* and noticed that the brakes were not working properly and the truck was coming fast. I started to blow the horn and look up when suddenly *(sic)* I observed a tractor about 100 yards away. I manage to turn right off the road whereby a green tractor was and trying to avoid hitting it. I move to the extreme right side of the tractor and still manage to touch the rear part of the tractor. That was when I heard a bang and suddenly felt that the truck turn over about two times…"

[18] In cross-examination, the third defendant, who gave his evidence in Spanish and with the assistance of the court interpreter, initially averred that the tractor driven by the first claimant was parked in the middle of the road. When asked if the accident happened on the extreme right of the road as he stated in his report to the police, the third defendant stated that this was correct. When put to him by Mr Leeroy Banner that:

> "Okay. Yes. Now, so bear in mind, how you're coming down the hill, if you pull to the extreme right, and hit the tractor, it means when you hit the tractor, the tractor was to the extreme right, correct? Yes?

[19] In response to this question, the third defendant replied: "Yes."

[20] In response to another question in cross-examination, the third defendant stated:

> "Well, when I was coming down the hill, I saw the tractor wanted to move off the road, but on the same way that, on the same side that I wanted to, he also went to that same side." [Emphasis added]

[21] The events as described by the third defendant could have happened only if the tractor was in motion and not stationary.

[22] In response to questions from the bench, the third defendant stated that he would not have stopped the truck even if he had attempted to do so because the brakes were not working and the truck had "a big load" of gravel.

[23] The court also asked the third defendant questions on a handwritten statement dated 26 April 2023. In that handwritten statement, which it appears was transcribed by someone else in English and submitted into evidence by the defendants, the following is stated:

> "It appeared to me the truck had brake failure comming *(sic)* down the hill and had gained too much speed. As it approached the curve it approached the tractor, going in the same direction. It appeared to me, that in an attempt to avoid collision with the tractor and to be able to take the curve at the speed it was coming, the truck tried to pass the tractor on the right side. It also appears that the tractor may have noticed the truck approaching out of control, and in a split second effort may also have tried to get out of the way by steering off the road to the right….I do also remember, while inspecting the crashed truck, that it had single chamber brake boosters on the rear axle. These brake chambers only work when the truck has air pressure, so in the event that the truck loses air pressure, it would also loose *(sic)* brake functionality. This could also be a reason for brake failure." [Emphasis added]

[24] It was apparent to me that the third defendant has limited English language speaking skills. This most likely explains why the statement, which he gave dated 26 April 2023 is, in several parts, written in the third person by whoever transcribed his statement. However, during cross-examination the third defendant did not disown any part of the said statement. It is clear from that statement that as far as the third defendant was concerned the tractor was in motion and going in the same direction as the out-of-control freightliner truck he was driving.

[25] In response to another clarifying question from the court, the third defendant stated that he was not able to control the truck as it was coming down the hill at high speed and that he thought the tractor moved to the same side of the road (i.e., the right side of the road), which is where he reiterated the accident occurred. In other words, it was the third defendant's testimony on oath that the tractor was not stationary and that the first claimant tried to move the tractor to the right-hand side of the road to avoid the accident.

[26] A Mr Oscar Reyes, one of the witnesses called by the claimants gave a statement to the police (see undated exhibit D2 filed by the defendants) in which he confirmed that he worked for the second claimant. He asserted that on 2 March 2022, he and the first claimant were instructed by the second claimant to go and retrieve an iron rake that was at a junction. He stated that:

> "While at the conjunction *(sic)* I saw Marbelio coming slow down the hill with the tractor. Marbelio was travelling from a West to East direction. I observed behind him was a big ten wheeler truck coming behind of *(sic)* of the tractor about 100 feet away. The truck was coming a little faster. I

> noticed that the truck was in the middle of the road. Suddenly, I alert *(sic)* Marbelio that a truck is coming behind and that moment I saw the truck moving to the right side of the road. I saw that the truck hit the tractor on the side and because it to break into parts…" [Emphasis added]

[27] This statement also talks of the first claimant's tractor being in motion at the time of the accident.

[28] In my assessment, the third defendant was not telling the truth when he initially stated that the tractor driven by the first claimant was stationary. Under cross examination and in response to the questions I posed to him and following a reminder that he was under oath, the third defendant affirmed that the tractor was moving at the time of the accident. Contrary to the defendant's written submissions, the statement given by Mr Reyes supports the first claimant's testimony that the tractor was in motion.

[29] I note that the second claimant attached to his witness statement a police report dated 17 August 2022 written by a Mr Alford Grinage, Commander of Operations. Of relevance is the statement that when the accident occurred, the tractor was "*parked off the road*." It also states that:

> "Police investigation revealed that Rolando ALCOSER is at fault for driving motor vehicle without due care and attention and was issued with a Notice of intended Prosecution."

[30] I am unable to place any weight on the police report since the author was not called to testify. In addition, it is unclear whether the Commander of Operations played any direct investigative role into the accident. Having heard and observed the first claimant and the third defendant giving evidence (the parties who were involved in the accident) I am satisfied that at the time of the accident, the tractor being driven by the first claimant was in motion and not parked in the middle of the road as alleged by the defendants in their defence.

[31] The defendants have not demonstrated that the first claimant (a) contributed to the injuries that he suffered by parking his tractor in the middle of the road, which exposed him to the risk of collision from other vehicles travelling in the same direction as the tractor and to the risk of the injuries he suffered; and (b) did not consider and acted in disregard of his own safety and did not act as a reasonably prudent person would have done in the circumstances that led to and resulted in the accident and the injuries he suffered.

[32] In recanting his testimony that the tractor was stationary, the third defendant dealt a fatal blow to the defendants' plea on contributory negligence. The defendants have not produced any evidence from which it can be said that the first claimant failed to exercise due care and

attention or failed to take reasonable steps to avoid an accident or that he failed to steer the tractor adequately to avoid the collision.

[33] The only information suggesting that the tractor was stationary (i.e., the police report and the statement of claim drafted by the claimants' lawyers) refers to the tractor being parked off the road. As noted above, having heard evidence from the first claimant and the third defendant, I am of the view that the information contained in the police report and the statement of claim is inaccurate in so far as it relates to the question whether at the time of the accident the tractor was stationary and in the middle of the road. However, even if one were to take those statements as true, (i.e., the police report and the statement of claim) they do not support a claim for contributory negligence since it is said that the tractor was parked off the road.

[34] Valiant as Crown Counsel Grinage's efforts were in arguing this point, the evidence simply does not support the contention that the first claimant was contributorily negligent in that his tractor was stationary and in the middle of the road at the time of the accident.

[35] It is reasonable to conclude that had the first claimant stopped and parked the tractor in the middle of the road, the police would have established this fact and charged the first claimant with negligent driving. The fact that the police did not do so is telling and that fact supports the first claimant's testimony that the tractor was in motion and that he tried to move to the extreme right of the road to get out of the freightliner's way and that his actions did not in any way cause or contribute to the injuries that he suffered.

[36] It is also telling that the second and third defendants withdrew their counterclaims for damages against the first and second claimants, which were sustainable only if they had pleaded facts and demonstrated that the first claimant had parked the tractor in the middle of the road and that but for that fact the accident would not have occurred.

[37] In the circumstances, I dismiss the defendants' contributory negligence plea.

[38] I will now address the first and second claimants claims for damages.

II. The first claimant's claims for special and general damages

(a) Special damages

[39] In the claim form and statement of claim, the first claimant claimed the following as special

damages:

(a) medical bill = $15,170.03

(b) cost of transportation – to and from the hospital = $400

(c) litigation costs up to date of trial = $3,000

(d) loss of salary = $5,775.00.

[40] At the start of the trial (and in response to enquiries from the court) Crown Counsel Grinage indicated (and in my view quite correctly) that the defendants were no longer disputing liability for the first claimant's claims for medical bills, costs of transportation to and from the hospital and litigation costs in the sums specified above. Notably, Crown Counsel did not plead that the first claimant's claims for special damages be reduced on account of contributory negligence. Rather counsel was happy for the court to record the defendants' agreement to settle in full and without any discount to reflect contributory negligence the first claimant's claim for medical and related transportation costs.

Medical and related transportation costs

[41] The claims for medical expenses, cost of transportation add up to $15,570.03, which I award to the first claimant together with interest at 6% per annum calculated from 2 February 2022. The first claimant claimed interest pursuant to section 175(1) of the Senior Courts Act, which provides:

> "In any proceedings tried in the Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment…"

[42] The defendants did not dispute the first claimant's claim for interest pursuant to section 175(1).

[43] The court has a broad discretion to determine (a) whether to award interest on damages; (b) the date on which the interest should run; and (c) the rate of interest. In exercising its discretion, the court must consider that the purpose of an award of interest is to compensate a claimant for being kept out of their money after they should have been paid (see ***Reinhard v Ondra*** [2015 EWGC 2943, at para. 3; ***Harbutt's v Wayne Tank Company*** (1970) 2 W.L.R 212).

[44] I share the opinion expressed by Lord Denning in ***Jefford v Gee*** [1970 2 QB, at 147 that the date from which interest should run "*might in some cases be…the date of the letter before action but at the latest it should be the date when the writ was served*." That said, I am also of

the view that in some cases it would be proper to award interest from the date the cause of action arose.

[45] In this case, the first claimant has not claimed that interest should run from the date the cause of action arose. In the circumstances, I shall award interest to the first claimant on the total amount claimed for medical bills and transportation costs **($15,570.03)** at the 6% statutory rate calculated from 2 February 2022 (the date on which the letter before action was sent to the defendants) to the date of judgment. This brings the total amount (damages and interest, rounded off) to **$18,373.00.**

Litigation costs

[46] I also award the first claimant costs of litigation on the sum claimed and admitted by the defendants, which is **$3,000.00**. Interest on this sum shall run from the date of judgment as that is the only appropriate date on which interest should run on the facts of this matter.

[47] In total, on the admitted sums (medical expenses, transportation costs and litigation costs), I award the first claim the total sum of **$21,373** (rounded off) with interest to run from the date of judgment at the statutory rate pursuant to section 176 of the Senior Courts Act.

Claim for loss of salary

[48] Regarding the claim for loss of salary, the defendants stated in their defence that they neither admitted nor denied the claimant's claim for loss of salary. However, in breach of Civil Procedure Rule (CPR) 10.5(5) the defendants did not provide reasons for resisting the claim. Although open to them, the claimants did not apply for an order declaring that in resorting to neither admitting nor denying the claim for loss of salary and in failing to provide reasons for resisting the claim, the defendants must be taken to have admitted the claim for the loss of salary claimed (see for example the decision in ***Dil v Commissioner of Police of the Metropolis*** [2014] EWHC 2184 (QB)).

[49] I uphold the first claimant's claim for lost salary on the ground that in not setting out their reasons for resisting the claim, the defendants must be taken as having admitted the same. I also uphold the first claimant's claim for the following additional reasons. The defendants do not dispute the first claimant's testimony as set out in his witness statement that he was in hospital from 2 March to 5 March 2022 because of the accident, which they accept was caused by the actions of the third defendant. Over those three days, the first claimant's right kidney was removed,

which fact the defendants accept. The claimant was readmitted to hospital on 14 March 2022 complaining of constant pain and he was discharged following treatment on 16 March 2022, which fact is not disputed and for which the defendants have agreed to pay the costs of medical treatment and transportation The first claimant also asserts that he was unable to work from 2 March 2022 until 19 June 2022 owing to the injuries that he sustained during the accident, which assertions have not been disputed or countervailed by any evidence. The claimant describes his injuries as (a) cut wound to the head and chin; (b) renal hematoma; (c) right occipital lineal fracture; and (d) hemoperitoneum as well as a raptured right kidney which was surgically removed.

[50] The claimant produced a letter from Hillbank Agricultural Company Limited written by a Ms Martha Dyck, a secretary at the company, who indicated that the first claimant was out of work from 2 March 2022 to 19 June 2022 and that he lost an average of $490 a week in wages. The authenticity of that correspondence has not been challenged.

[51] I am satisfied that the first claimant has demonstrated on a balance of probabilities that (a) when the accident occurred, he worked and continues to work for Hillbank Agricultural Company Limited and that the second claimant (a director at that company) was his manager; (b) owing to the very serious and life-changing injuries that he suffered during the 2 March 2022 accident he was out of work and was not paid during that period, which ended on 19 June 2022; and (c) between 2 March 2022 and 19 June 2022, he lost income in the total sum of $5,775.00.

[52] Drawing on the above, I award the first claimant the claimed sum of **$5,775.00**, which represents lost income. For the same reasons as set out in **para. 39-43** above, I award the first claimant interest sum at 6% per annum calculated from 2 February 2022 to the date of judgment, which at the date of judgment amounts to **$6,815.00.**

[53] I dismiss the defendants' attack on the first claimant's credibility, which is based on the rather spurious suggestion that the first claimant lied in court that he never committed an offence, yet he had driven an unlicensed and unregistered tractor. The first claimant was never charged with any offence by the police following the accident. Crown Counsel did not counteract the first and second defendants' statements that the road on which the accident occurred was a private road and that consequently there was not need for the tractor to be registered. Whatever the truth of the matter, it is not for this court to make an adverse credibility

determination based on unproven allegations.

[54] In summary, by way of special damages for medical expenses, transportation costs, litigation fees and lost wages, I award the first claimant the total sum of **$28,188.00.**

(b) General damages

[55] The first claimant claimed general damages, which he particularised as follows:

(a) cut wound to the head;

(b) cut wound to the chin;

(c) renal hematoma (i.e., a bruised kidney, which results in bleeding inside the kidney);

(d) right occipital lineal fracture (i.e., a fracture on the skull);

(e) hemoperitoneum (i.e., injury that results in the presence of blood in the peritoneal cavity, abdomen);

(f) ruptured right kidney, which was surgically removed.

[56] In their defence, the defendants neither admitted nor denied the injuries suffered by the first claimant putting him to "strict proof of the same." In their written submissions, the accepted the first claimant's description of his injuries, that (a) the injuries were "severe"; and (b) in losing one kidney, the first claimant is now disabled, which results in a loss of amenities.

[57] In his witness statement the first claimant explained that following the accident, he experienced and continues to severe pain all over his body and especially in his abdomen as well as recurring headaches. The claimant also explained that during his hospitalisation, he was in constant pain and received medication for the same. He also explained that because of these injuries, he is not longer able to lift heavy objects and that the injuries have affected his ability to effectively discharge the responsibilities of his job. He explains that he is unable to climb onto vehicles or go underneath them as he used to do before and that if he does try, he finds it painful in his stomach, which activity is critical for his type of employment as a farmhand. He also explained that he finds it difficult to be on his feet for any length of time. The first claimant also asserted that:

> "Even though my boss still has me employed, I feel like he is doing it out of our friendship and because I was a hardworking employee. Because I cannot work as before, this cause me to feel less of a man. I always pride myself in working hard."

[58] The first claimant also explained that he is no longer able to play football with his grandkids with whom he used to play as he loves the sport. He explains that the accident left him

traumatised and that when travelling in a car and when he hears a truck coming from behind, he has flashbacks of the accident, and it causes him lots of anxiety.

[59] The first claimant produced a rather perfunctory report from the Northern Medical Speciality Plaza (a medical facility) dated 12 May 2022 written by Dr Miguel Quetzal Magana (a general surgeon). In addition, he did not produce an up-to-date report on his medical situation, which situation I must say, I find surprising.

[60] In the written submissions submitted on behalf of the first claimant, reference was made to the ***Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases***, 17th Ed (JC Guidelines). In their oral submissions both parties affirmed that it is the practice in this jurisdiction to refer to and use the JC Guidelines in assessing general damages in personal injury cases.

[61] Drawing on the JC Guidelines, the claimant claims (a) $30,381.00 for the injuries he sustained to his head; (b) $5,830.50 for leg injuries; (c) between $50,134.50 to $91,591.50 for "pain disorder"; and (d) between $18.642 to $54,093 for scarring.

[62] On their part, the defendants plead that the first claimant should be awarded one lump sum of $3,000 for pain and suffering and loss of amenities for life.

(i) Loss of kidney

[63] With respect to the first claimant's claim for damages for the loss of his right kidney, the parties settled, after a period of deliberation, on **$75.000.00** Consequently, I award the first claimant the sum of **$75,000.00** representing damages for the injury he suffered, which resulted in the surgical removal of his kidney. To this amount, I will add with interest at the statutory rate to run from the date of judgment.

(ii) General principles on general damages

[64] The aim of an award of damages for personal injuries is to provide compensation and to place the injured party in the same position as s/he would have been had they not sustained the injuries they suffered (***British Transport Commission v Gourley*** (1956) AC 185).

[65] In ***Livingstone v Rawyards Coal Company*** [1880] 5 App. Cas. 25, at p.39, Lord Blackburn stated:

> "… where any injury is to be compensated by damages, in settling the sum of money to be given

> for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he had not sustained the wrong."

[66] However, as noted in ***Heil v Rankin*** [2000] 3 All ER 138:

> "There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained, into monetary terms. Any process of conversion must be essentially artificial."

[67] See also the same opinion made in ***H West and Sons Ltd v Shephard*** [1964] AC 326 at p. 364).

[68] In ***Cornilliac v St Louis*** (1965) 7 WLR 491, the Court of Appeal of Trinidad and Tobago ruled that when assessing general damages in personal injury matters, the court should consider:

(a) the nature and extent of the injuries sustained;

(b) the nature and gravity of the resulting disability;

(c) pain and suffering;

(d) loss of amenities; and

(e) the extent to which the injured person's pecuniary prospects are affected.

[69] In addition to ensuring that damages are proportionate to the injury suffered, courts will also strive for assessability, uniformity and predictability in its determination of general damages (***Heil v Rankin*** [2000] 3 All ER 138 see para. 17). This promotes the overriding objective of ensuring the just resolution of disputes. It also assists injured parties, their advisers and defendants to know with some (and hopefully with an increasing) degree of certainty the amounts of damages that will likely be awarded for different categories of injuries if liability is established or admitted. It is in this respect that reference should as a rule be made to decided cases, including to resources such as the Judicial College Guidelines, referenced in this matter by the claimants, and including as noted by Justice of Appeal Riley in her minority opinion in the recent decision in the case of ***Bennett v Williams Jr***, Civil Appeal No. 25 of 2021, at para. 64. However, decisions ought to be made on the particular facts and circumstances of each case with awards made in comparative cases used as guidelines and not as principles or rules of law.

(iii) Analysis

[70] As noted above, the defendants have not disputed the nature and impact on the first claimant of the injuries, which he suffered from the accident. They accept that the injuries were severe,

have caused the first claimant disability, which has resulted in a loss of amenities of life as well as the *"the ability to do his job in the same manner as before…as he now suffers from severe back [and disabling] pain*" when standing for long periods.

[71] I will now review, but only for guidance purposes, awards of general damages made in a small sample of cases decided by the High Court over the past ten or so years.

[72] In the case of ***Bainton v Attorney General,*** BZ 2012 SC 43, the claimant who was shot in her left leg was awarded **$30,000** by way of general damages. The claimant underwent surgery to remove the bullets from her leg but only one pellet was removed as the doctors did not consider it safe to remove the other.

[73] In ***Idelfonso v Wagner***, Claim No. 74 of 2014, the claimant was awarded **$50,000** in damages for injury, which resulted in the shortening of her leg and what was termed a 20% residual disability.

[74] In ***Aguilar v Wang***, Claim No. 550 of 2014, the claimant was awarded **$82,000** in damages for an injury that resulted from a motor vehicle accident. The claimant suffered an open fracture on his left wrist, a fracture of his right thigh bone, which caused him to walk with a noticeable limp. The claimant required three surgeries and still required corrective surgery. His injuries caused him to not work for four months.

[75] In ***Gill v Jones***, Claim No. 4 of 2015, the claimant was awarded **$100,000** following an accident that resulted in an amputation of one of his legs above the knee.

[76] In ***Castanaza v Oscar Tzib and Plastic World Ltd***, Claim No. 577 of 2001, the claimant was awarded **$180,000** in general damages. Following a motor vehicle accident, the claimant was seriously injured. Six months after the accident he was flown to the US for further treatment where his leg was amputated.

[77] In ***Jacobo v Murphey***, Claim No. 155 of 2018, the claimant suffered multiple facial fractures, lacerations of the spleen, which was removed as a consequent to which the claimant was at a heightened risk of infections. The claimant also suffered multiple fractures of his ribs, left femur, left tibia and fibula and was unlikely to regain normal speech. He had permanent scars and was unable to walk or work for a year. The claimant was awarded $**130,000.**

[78] In ***Lopez v Attorney General,*** Claim No. 278 of 2019, the claimant was awarded **$150,000** in general damages for injuries he sustained after being shot by an off-duty police officer. His injuries resulted in the amputation of his left leg.

[79] I propose to grant one lump sum to the claimant representing damages for pain, suffering and loss of amenities for life. As noted in the case of ***Heil v Rankin*** [2000] 3 All ER 138, at para. 39:

> "The court's approach involves trying to find the global sum which most accurately in monetary terms reflects or can be regarded as reflecting a fair, reasonable and just figure for the injuries which have been inflicted and the consequences which they will have in PSLA. A sophisticated analytical approach distinguishing between pain and suffering and loss of amenity is not usually required."

[80] This is the same approach requested of the court by the defendants in this matter. For their part, the claimants did not express any preference leaving the matter to the court.

[81] Drawing on the injuries suffered by the claimant and the undisputed impact it has had on his life, mental health, including the pain he suffered and from which he continues to suffer as well as the impairment of the quality of his life and his inability to work as before and to enjoy an active lifestyle, I award the claimant **$70,000**. To this will be added the sum agreed between the parties of **$75,000** for the claimant's loss of his kidney. This brings the total amount awarded to the claimant as general damages for pain, suffering and loss of amenities for life, including the loss of his kidney to **$145,000. 00.** This sum is well within and consistent with the broad parameters of the damages awarded in Belize, including as reflected in the recent case of ***Lopez v Attorney General*** in which (as noted above) the claimant lost a leg.

[82] I will now turn to address the claims made by the second claimant.

III. The second claimant's claims for special damages

[83] In his statement of claim, the second claimant claimed $175,000 as the cost of replacing the John Deere tractor and $129,000 for loss of earnings over a four-month period. I will address each in turn.

(a) Loss of the tractor

[84] In their defence, the defendants pleaded that the first claimant was contributorily negligent in the accident, which resulted in the loss of the tractor. This plea, which I have addressed above, has no merit.

[85] In relation to para. 13 of the statement of claim in which the first claimant asserted that the John Deere tractor was damaged beyond repair and in relation to which photographs were attached showing the tractor in pieces, the defendants (in para. 25 of their defence) pleaded that they "neither admit nor deny" those averments and "put the claimants to strict proof of the same."

[86] The defendants' defence was deficient in two key respects.

[87] First, the defendants' defence did not comply with Civil Procedure Rule (CPR) 10.5(3)(c), which provides that:

> "In the defence, the defendant must say –
>
> (a) []
>
> (b) []
>
> (c) which (if any) [allegations set out in the claimant's claim form or statement of claim] are neither admitted nor denied, because the defendant does not know whether they are true, but which the defendant wishes the claimant to prove." [Emphasis added]

[88] The defendants did not outline the reason why they neither admitted nor denied the claim that the John Deere tractor was involved in the accident that took place on 2 March 2022 and that it was damaged beyond repair. There is no question that the defendants knew from the date of the accident that the tractor, ownership of which is claimed by the second claimant, was involved in the traffic accident and that it was damaged beyond repair. Furthermore, the defendants caused their expert, a Mr Darren Azueta to view and assess the damage caused to the John Deere tractor.

[89] Second, the defendants breached CPR 10.5(5), which provides:

> "If, in relation to any allegation in the claim form or statement of claim, the defendant does not –
>
> (a) admit it; or
>
> (b) deny it and put forward a different version of events,
>
> the defendant must state the reasons for resisting the allegation."

[90] In this matter, the defendants did not in their defence state the reason for resisting the second claimant's claim for damages representing the value of the John Deere tractor.

[91] Since the defendants opted to not comply with these peremptory provisions of the CPR and failed to advance any defence, they are taken to have admitted the second claimant's claim that (a) he owns the John Deere tractor; (b) the John Deere tractor was involved in the accident, the outcome of which is the subject of these instant proceedings; (c) the John Deere tractor

was damaged beyond repair; and (d) the accident was caused by the third defence (which fact is expressly conceded by the defendants).

[92] In the circumstances, I hold that the second claimant's claim for the damage caused to his tractor is to be regarded as admitted by the defendants.

[93] In addition, on the evidence produced by the second claimant I hold that he has demonstrated on a balance of probabilities that he owns the damaged tractor and that it was bequeathed to him by his father. This fact is clear enough from the Grant of Letters of Administration, the authenticity of which was not challenged or undermined in any way by the defendants. The defendants did not lead any evidence which suggests that the tractor is owned by anyone else other than the second claimant.

[94] In their defence, the defendants could have but chose not to advance a defence challenging the value ascribed by the second claimant to the tractor. They merely asked that the second claimant prove the tractor's value, which he (the first claimant) put at between US$25,000 to US$45,000 (see para. 14 of the statement of claim).

[95] Both parties relied on expert evidence to determine the value of the John Deere tractor. A Mr Darren Azueta for the defendants opined that similar type tractors would cost between $79,425 to $204,250. In his witness statement, the second claimant claimed that the replacement cost of the John Deere tractor (as opposed to the value of the damaged tractor) was $252,0000. He also gave as comparisons the cost of new tractors rather than focusing on the value of the damaged John Deere tractor. The reason why it was difficult to definitively pin down a valuation is because the John Deere tractor in question was manufactured between 1979-1982.

[96] Drawing on the estimates provided by each of the respective parties, I accept that the tractor is more likely than not to have the value ascribed to it by the claimant. In this regard, I shall award the second claimant the sum of **$90,000** (put as US$45,0000 in the statement of claim) as representing the value of the destroyed John Deere tractor.

[97] The second claimant did not present any admissible evidence on the costs of purchasing a similar-type tractor in the United States and the cost of freight and related import taxes. Consequently, I decline to make any awards for these unproven claims.

(b) Claim for lost income

[98] In his statement of claim, the second claimant claimed **$129,600.00**, which he said represented loss of income, which he would have earned but for the destruction of his tractor. In their defence, the defendants posited that the second claimant prove his loss. And in their written submissions as well as during cross examination, the defendants challenged the second claimant's entitlement to claim damages for loss of income in his personal capacity as opposed to Hillbank Agricultural Company Ltd.

[99] On this head of damages, I find for the defendants and conclude that the second claimant has failed to demonstrate on a balance of probabilities that he personally lost income because of the destruction of his John Deere tractor in the 2 March 2022 collision.

[100] During cross-examination, the second claimant affirmed that he carried on business through Hillbank Agricultural Company Ltd and that he was a shareholder and one of the directors in that company. He also confirmed that he used the John Deere tractor both for personal use and for purposes of the business transacted by Hillbank Agricultural Company Ltd. The second claimant also affirmed that the contract, which he said he entered into with Caribbean Sustainable Agriculture Ltd (referenced in a letter dated 24 July 2023) was in effect with Hillbank Agricultural Company Ltd.

[101] It would have been a very different case had (a) Hillbank Agricultural Company Ltd been added as a party; (b) adequate evidence been led demonstrating that he claimant gave Hillbank Agricultural Company Ltd rights to use the John Deere tractor in its business; (c) it been demonstrated that Hillbank Agricultural Company Ltd had a valid and enforceable contract with Caribbean Sustainable Agricultural Ltd, which it failed to fulfil because of the accident caused by the third defendant's wrongful acts; and (e) been demonstrated that Hillbank Agricultural Company Ltd suffered loss of income.

[102] As argued by Crown Counsel a company is a separate legal entity and is legally distinct from its directors and shareholders (***Salomon v Salomon and Co. Ltd*** [1897] AC 22). In this regard, the second claimant has no cause of action arising from an actionable loss suffered by a company in which he is a shareholder and/or a director. Any actionable claim must be initiated by and in the name of the relevant corporate entity, which in this case is Hillbank Agricultural Company Ltd.

[103] Consequently, I dismiss the second claimant's claim for loss of income.

IV. Costs

[104] In their pleadings, the claimants requested costs while in their defence, the defendants pleaded that each party be made to bear its own costs. In their oral and written submissions both parties agreed that costs should follow the cause. The first claimant has been successful on all grounds while the second claimant has succeeded on one of his two grounds for damages. In the circumstances, I order the defendants to pay the first and second defendants' costs, which if not agreed shall be assessed.

V. Conclusion

[105] Drawing on the above, I rule as follows:

(a) The first claimant, Mr Marbelio Gonzalez is awarded the sum of **$28,188.00** representing special damages for medical expenses, transportation costs, litigation fees, and lost wages.

(b) The first claimant, Mr Marbelio Gonzalez is awarded the sum of **$145,000.00** representing general damages for pain, suffering and loss of amenities for life, including loss of a kidney.

(c) The second claimant, Mr Marlon Dyck is awarded the sum of **$90,000.00** representing the value of the John Deere tractor.

(d) The second claimant, Mr Marlon Dyck's claim for loss of income is dismissed.

[106] In conclusion, I wish to commend Mr Banner (for the claimants) and Crown Counsel Grinage who appeared with Ms Burgess (for the defendants) for the excellent way they presented their respective cases and in aptly focusing their cross-examination and submissions on matters that were in real dispute between the parties.

HHJ Hondora
Judge
High Court
Civil Division