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### MAGCO LEGAL LESSONS NO. 35

#### LEGAL TOPIC: QUANTUM OF DAMAGES PAYABLE IN MOTOR VEHICULAR COLLISIONS - REMEDIES

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Motor vehicular accidents are unexpected, but certainly possible, they are events that can occur daily. They range from simple fender benders that have minor impacts on people's lives, to collisions which can leave persons severely injured, crippled or dead. The question that arises in these cases is what legal remedies are available to those people who suffer injuries, losses, and damages as a result of these motor vehicular collisions and this can include motor vehicular damage, property damage and personal bodily injuries, which could even be fatal.

In our fourth (4<sup>th</sup>) and twenty-second (22<sup>nd</sup>) Articles, we explored the legal requirements for claimants to establish claims in negligence and motor vehicular collisions. In short, we expressed that the following elements must be established:

1. That there was a duty of care owed by the defendant to the claimant;
2. That the defendant breached their duty of care which they owed to the claimant; and
3. That the claimant suffered damage as a result of the defendant's breach of their duty of care.

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Once these elements are established in a claim, the defendant would be held liable to the claimant for damages. The issue that would then arise is what is the quantum or measure of damages the claimant would be entitled to. We will focus on this issue in this article and outline the evidence that a claimant would require to obtain an award of damages.

### **THE PRINCIPLES OF RECOVERABILITY**

An award of damages is meant to compensate an injured person for damages, losses, and injuries they have suffered, and it must never be viewed as a road to riches. Further, a claimant is entitled to fair, not perfect, compensation: **CV2007-02766 Carolyn Fleming v. The Attorney General of Trinidad and Tobago; Civ App No. 25 of 2007 Munroe Thomas v. Malachi Ford.**

In other words, a claimant would be entitled to *restitutio in integrum*, that is to be placed in a position that they would have been had the tort not occurred: **CA No. 20 of 2002 Anand Rampersad v. Willies Ice-Cream Limited.** This was reiterated in the matter of **CV2011-00489 Helena Holder v. The Attorney General of Trinidad and Tobago** wherein the Court stated as follows:

“The overly rehashed statement of principle that the purpose of damages is to put the claimant visited by the tort, back into the position that she was in prior to its occurrence, finds relevance herein. This court’s aim was to provide fair compensation to this claimant for the injuries sustained; the path for which was only achievable based on a proper balancing of the evidence and law.”

Further, it is a general principle of law that a claimant who claims that they have suffered injuries, losses and damages must prove such. This was stated by the Court of Appeal in **CA No. 20 of 2002 Anand Rampersad v. Willies Ice-Cream Limited:**

“The rule is that the Plaintiff must prove his loss. The correct approach is stated by Lord Goddard, C.J. in **Bonham-Carter v. Hyde Park Hotel [1945 64 Law Times 177:**

‘Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damages; it is not enough to write down the particulars, and, so to speak, throw them at the Court saying: ‘This is what I have lost; I ask you to give me these damages.’ They have to prove it.’”

The awards of damages that a claimant can claim can be separated into two broad categories: General Damages and Special Damages. These categories will now be explored separately.

### **GENERAL DAMAGES**

General Damages flow from the direct, natural, or probable consequences of the wrong. These are incapable of precise quantification and cover past and future non-financial losses as well as future financial losses: **CV2011-00489 Helena Holder v. The Attorney General of Trinidad and Tobago**.

According to the landmark case of **Cornilliac v. St. Louis (1966) 7 WIR 491**, which was presided over by the illustrious Chief Justice Sir Hugh Wooding, the Court would consider the following matters in assessing a claimant’s General Damages;

1. The nature and extent of the injuries suffered;
2. The nature and gravity of the resulting physical disability;
3. The pain and suffering which had to be endured;
4. The loss of amenities suffered; and
5. The extent to which the claimant’s pecuniary prospects have been materially affected.

Based on the above-listed considerations, the General Damages that a claimant may claim can be divided into certain categories that will be considered hereunder.

### **Pain and Suffering**

An award for pain and suffering is made to compensate a claimant for the physical pain and mental stress endured because of their injuries: **CV2013-02216 Devanand Ramsamooj v. Dai-Tech Limited**. The argument that pain and suffering could be both

mental and physical was reiterated by the Court in **Heeralall v. Hack Bros (Construction) Company Limited (1977) 25 WIR 117**:

“The next head of general damages - pain and suffering - can be an element of considerable substance in some cases, relating as it does, to both physical and mental pain and suffering, past as well as present and prospective (if any).

In order to prove their pain and suffering, a claimant ought to produce medical reports clearly outlining the same. In determining the sum that a claimant is entitled to, the Court would consider prior awards made in comparable cases.

### **Loss of Amenities**

The purpose of an award for loss of amenities is to compensate a claimant for the loss of the enjoyment of their life. Therefore, if a claimant enjoyed playing sports or had an active social life prior to sustaining their injuries, they may claim an award for loss of amenities if they are no longer able to participate in or enjoy such activities due to the injuries suffered. The Court in **Heeralall v. Hack Bros (Construction) Company Limited (1977) 25 WIR 117** expressed the following as it relates to loss of amenities:

“‘Loss of amenities’—the ability to enjoy life in the way that he formerly could, whatever life should offer. This head of general damages embraces everything which reduces the plaintiff’s enjoyment of life, considered apart from pain and suffering and apart from any material loss which may be attendant upon the plaintiff’s injuries... Money cannot buy this. But it may enable the loser to enjoy other things instead and be some solace or consolation to the plaintiff.”

The claimant should prove such loss of amenities via medical reports and evidence of previous participation in activities that they enjoyed. In determining the sum that the claimant is entitled to from suffering a loss of amenities, the Court will consider prior monetary awards made in comparable cases.

### **Loss of Future Earnings**

An award for loss of future earnings is made to compensate a claimant where their injuries would prevent them from working in the future. In **CV2015-00621 Malcolm Francis v. Prakash Auto & Hardware Supplies Limited et al.**, the Court outlined the principles in respect of this head of damage:

“A claim for future loss of earnings must be demonstrated by cogent medical evidence, showing that Malcolm’s injuries incapacitated him to the extent that he was unable to work at all or, if he could, he could only do so at a reduced level. Generally, this head of damage was applicable where the nature of the injury will impair earning capacity for a number of years or for the rest of the claimant’s life. The assessing court would require the claiming party to produce medicals that spoke directly to this loss and/or look to the medical evidence on cross-examination to reinforce the claim for future loss of pecuniary prospects. An assessing court would not accept uncorroborated evidence of a claimant that he was unable to work in the future. According to Hamel-Smith J.A. in **Parahoo v S.M. Jaleel Company Limited**, a party claiming loss of pecuniary prospects must show that the injury was of such a nature that it rendered him incapable of performing his pre-accident job or any other form of work whatsoever. Where he was rendered incapable of performing the prior job, but it did not prevent him doing other work, it was necessary to show that, in order to mitigate his loss. Only medical evidence on the nature and residual effects of the injuries on the claiming party’s ability to work would discharge this onus.”

If such an award is claimed, the claimant must provide medical evidence demonstrating that there is a continued loss of earnings linked to the collision: **Civ App No. 25 of 2007 Munroe Thomas v. Malachi Ford**. On this point, the Court in **CV2008-04072 Wesley Gabriel v. Royal Bank of Trinidad and Tobago** had this to say:

“[T]his court feels that it was incumbent upon the Claimant, who was pursuing a claim for loss of pecuniary prospects and loss of future earnings to have had a comprehensive medical report justifying a finding such that which he wishes this court to reach, namely, that his future earnings would be severely affected. Unfortunately, the evidence was not made available to assist the court.”

The Court would determine the award using the multiplier multiplicand method. Per this method, the Court will determine the claimant's net yearly income, that is the multiplicand, and multiply that by the number of years they would have been expected to work if they did not suffer their injuries, which is referred to as the multiplier. In determining the multiplicand, the Court will have regard to proof of the claimant's earnings inclusive of payslips and bank statements. The Court will determine the multiplicand by comparing the claimant's case with other matters with similar circumstances.

Alternatively, where there are evidential uncertainties that prevent a court from using the multiplier/multiplicand method, the Court would disregard this conventional approach and arrive at a lump sum figure to compensate the claimant for the future loss of earnings: **CV2014-04881 Nekeisha Candice Moe v. Caribbean Airlines et al.**

#### **Loss of Earning Capacity**

Whereas an award for loss of future earnings compensates a Claimant who becomes unemployed as a result of the accident and results in their inability to work in the future, an award for loss of earning capacity only arises "where the claimant is employed at the date of trial but there is a substantial or real risk that he may lose this employment at some future time and may as a result of the injury be at a disadvantage in getting another job or an equally well-paying job", according to the Court in **CV2014-04881 Nekeisha Candice Moe v. Caribbean Airlines et al.**

The award may also apply where there is evidence of disadvantage in the labour market whether the Claimant is employed at the date of Trial or not: **Ramnarine Singh & Ganesh Roonarine v. The Great Northern Insurance Company Limited & Johnson Ansola CA 169 of 2008.**

#### **Future Medical Expenses**

A claimant can claim damages for the cost of any future medical expenses they would incur. This includes, but is not limited to, future surgeries, future medical care, and future medication. However, if any of the above are available at a public health facility or are

accessible to the claimant and no cost, the Court may not award the claimant any damages in respect of those items, for future medical expenses.

This was seen in **CA 61 of 2009 Amin Mohammed v. Alvin Panalal et al.** where the Court refused to award the Claimant therein with damages for a future knee replacement surgery as the same was available for free at public hospitals. The Court expressed:

‘7. As to the third reason given by the Master, there is clear evidence that knee replacement surgery is available locally, and at no cost, in the public hospital. When it came to the first operation that the Appellant had undergone the Master held that there was good reason for that operation to be undertaken in a private institution because the Appellant was in considerable pain and would have had to wait a year before he could have undertaken the surgery in the public hospitals, whereas in the private hospitals the surgery was available in short order. By undertaking the surgery in the private institution, the Master found that the appellant acted reasonably and therefore awarded the costs of that surgery. In this case, however, [for the knee replacement surgery], the future surgery is not urgently required so the waiting time in the public hospitals is not a factor.’”

## **SPECIAL DAMAGES**

Special Damages refer to past pecuniary losses that can be calculated, with a certain measure of precision, and include all out-of-pocket expenses and loss of earnings incurred by a claimant (**CA No. 20 of 2002 Anand Rampersad v. Willies Ice-Cream Limited; CV2013-00262 Jody Ali v. Donnie Ramai**). In proving special damages, a claimant cannot merely say that they sustained a loss, but they must satisfy the Court as to the fact of damage and its amount: **CA No. 28 of 2011 Dennis Edwards v. Namalco Construction Services Limited and Anor. [11]; Civ. App. No. 162 of 1985 Grant v. Motilal Moon Limited and Anor.**

In proof of Special Damages, it is always ideal to provide the Court with documentary evidence such as bills, receipts, and bank statements. However, the Court’s approach in determining the quality of evidence of Special Damages is determined on the

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circumstances of a particular case. This was expressed by the Court in **CV2013-00262**

**Jody Ali v. Donnie Ramai:**

“It is accepted, however, that courts tend to take a realistic approach with regard to the proof of special damages and that particularity must be tailored to the facts. Generally, the quality of evidence that the court will insist upon in proof of a particular item of special damage will vary according to a number of factors, most notably: the nature of the item in respect of which the claim is made; the difficulty or ease with which proper evidence of value might be obtained; the value of the individual item; the character of the acts which produced the damage and the circumstances under which these acts are done. It is to be noted that this realistic approach must not derogate from the overriding obligation imposed on a claimant to prove his special damages claimed and not to simply, by a process of random estimation or guesswork, pluck figures out of the air with the hope that his claim will be accepted by the court.”

It follows that a claimant may claim special damages for the following:

**Medical Expenses**

Medical expenses include all the costs in respect of the claimant’s treatment at hospitals and health facilities, medical reports and assessments, medical supplies, and medication. In order to prove these expenses, a claimant ought to produce bills, receipts, invoices, or any other documents that prove the incurrence of the same. Please note, a Claimant will not be compensated for medications or medical services received for, or which could be received for free at public Hospitals

**Loss of Earnings**

An award for loss of earnings is meant to compensate the claimant for the time they were unable to work because of their injuries. In proving loss of earnings, a claimant must provide a court with evidence of their ordinary salary or earnings including, but not limited to, payslips, bank statements, and job letters. However, the claimant must also provide the court with a medical report showing that their injuries rendered them incapable of performing any work. Medical evidence as to the nature of the injury and

the residual effect that the injury had on the claimant's ability to work is imperative: **CA No. 28 of 2011 Dennis Edwards v. Namalco Construction Services Limited and Anor.** [15]; **Civ. App. No. 110 of 2001 Seudath Parahoo v. S.M. Jaleel and Company Limited.**

### **Damage to and Destruction to Property**

In some cases, a claimant's property, such as their motor vehicle or personal property, may have been damaged or destroyed. Where the claimant's property can be repaired, the claimant would be entitled to recover the cost of repairs. However, if the claimant's property is destroyed or damaged to an extent where the cost of repair would exceed the value of their property, the claimant would be entitled to the cost of replacement. This is usually taken to be the market value of the item at the time and place of destruction. The Court would deduct the cost of replacement from the salvage value of the item. These principles were outlined in **CA No. 20 of 2002 Anand Rampersad v. Willies Ice-Cream Limited.** In order to succeed in a claim for damage to and destruction of property, a claimant ought to provide the court with an estimate for repairs or preferably an adjuster's report showing the value of loss and the replacement value.

### **Travelling Expenses**

Due to personal injuries suffered, a claimant may have to visit hospitals or private Doctors or private Medical institutions, for medical opinions and treatment. As such, the claimant may have to pay a driver or hire transport to carry them to hospitals and other medical facilities. The claimant may claim the money paid in respect of transport, but they must provide proof of payment, such as receipts. It would also be helpful for the claimant to produce proof of their hospital or doctors' visits, and these include appointment cards or indications of the claimant's visiting days at the doctor or hospital via medical reports.

In **CA No. 28 of 2011 Dennis Edwards v. Namalco Construction Services Limited and Anor.**, the Appellant failed to successfully prove their incurrence of travelling expenses:

“With respect to future travelling expenses, there was also no documentary evidence to support the Appellant’s assertions as to the cost of taxi fare to and from the hospital as he did not submit any receipts to substantiate his claim. Additionally, there was no medical evidence on which the court could determine if the need for hospital visits would continue and how frequently they would occur. As such, there was no basis other than the Appellant’s testimony to make an award for future travelling. Accordingly, the judge was correct in deciding that the Appellant had not established any evidential basis for such an award.”

### **Domestic Assistance**

A claimant may recover damages for any expenses incurred by having to hire someone to care for them because of their injuries. This award may be made even if the claimant received care from a relative whom they did not pay. This was reflected in **CV2013-02216 Devanand Ramsamooj v. Dai-Tech Limited** wherein the Court stated as follows:

“The Claimant's evidence is that during his period of incapacity, his aunt looked after him. He does not purport to have paid his aunt and consequently provides no receipts for this expense. With respect to this claim on the evidence I am satisfied that the Claimant needed nursing assistance and that this assistance was provided to him by his aunt. I am also satisfied that the Defendant is liable to pay to the Claimant the value of these services.”

### **INTEREST**

A claimant may also be entitled to an award of interest on their General and Special Damages. This is pursuant to **s.25 of the Supreme Court of Judicature Act Chap. 4:01**, which permits the Court to include in the sum for which judgment is given interest at a rate as it thinks fit:

“In any proceedings tried in any Court of record for 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, but nothing in this section—

- (a) shall authorise the giving of interest upon interest;
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) shall affect the damages recoverable for the dishonour of a bill of exchange.”

The purpose of an award of interest is to compensate the claimant for being kept out of the money which ought to have been paid to them. However, future awards are not subject to awards of interest. These principles were expressed in **CV2013-02216 Devanand Ramsamooj v. Dai-Tech Limited** and **Jefford v. Gee [1970] AC 130**.

The Court would determine the rates of interest that claimants would be entitled to by considering the prevailing economic climate and in particular, the rates of interest being paid by financial institutions. This was expressed by the Court in **CV2013-02216 Devanand Ramsamooj v. Dai-Tech Limited** wherein the Claimant was awarded interest on Special Damages at a rate of three per cent (3%) per annum and on General Damages at a rate of six per cent (6%) per annum.

## CONCLUSION

Indeed, the involvement of a person in a motor vehicular collision is often unexpected and has life-changing effects. The Courts however, do provide remedies to these persons, but they must come well equipped to prove their cases. It is often expressed that a Court is sometimes the last resort option for a person to obtain a remedy, and in cases involving personal injuries, it is preferable to negotiate a settlement in the interest of saving judicial time and expenses, however, if that is not possible, then Litigation through the Courts may be the only option. For more information on this topic and on claims in negligence, you are more than welcome to read our fourth (4<sup>th</sup>) and twenty-second (22<sup>nd</sup>) Articles.

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