[2025] JMSC Civ. 11

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016HCV04205

BETWEEN	**LEONIE LEWARS**	**CLAIMANT**
AND	**CURTIS SENIOR**	**DEFENDANT**

IN OPEN COURT

Mr. Sean Kinghorn instructed by Kinghorn & Kinghorn appearing for the Claimant

Mrs. Denise Oswest-Senior instructed by Oswest Senior-Smith & Company appearing for the Defendant

Heard: 31th July, 2024, 8th November, 2024 and 28th February, 2025

Tort — Negligence — Personal Injury –– Claimant bitten by a dog — Whether Medical Reports that were not listed in List of Documents and not pleaded are admissible — Duty of Care — Whether duty of care was breached — Standard of care

Assessment of Damages — Pain and suffering — Loss of Amenities — Special damages — Transportation Expenses – Loss of Earnings

T. HUTCHINSON SHELLY, J

BACKGROUND

[1] The Claimant, Leonie Lewars filed a Claim Form and Particulars of Claim on October 7th, 2016 in which she seeks damages for personal injuries and loss suffered as a result of being bitten by a dog allegedly owned by the Defendant,

Curtis Senior. The claim is in negligence against the Defendant to recover loss, damages and incurred expenses.

[2] The Claimant is a Businesswoman who resides at Lot 552 Orchid Drive, Belle Air, Runaway Bay in the parish of St. Ann. She alleges that on the 16th of May 2016, while she was walking along Orchid Drive, she was attacked by four (4) dogs. Of the four (4) dogs who attacked her, one was a Rottweiler who bit her on her thigh. This Rottweiler belongs to the Defendant.

[3] The Defendant is a Videographer who lives at Lot 559 Orchid Drive, Bellaire, Runaway Bay in the parish of St. Ann. In his Defence filed on the 11th of October 2017, he does not deny the fact of the incident. He denies however that he was negligent in causing same.

[4] The allegations of Negligence against the Defendant have been particularized in the Claimant's Particulars of Claim:

i. Not properly securing his dogs on his premises;

ii. Failing in his duty of care to all passer-by by not properly securing his premises so as to disallow the escape of his dogs; and

iii. By reason of the Defendant's negligence, the Claimant suffered personal injury, loss, damage and incurred expenses.

PRELIMINARY POINT

THE ADMISSIBILITY OF MEDICAL REPORTS SERVED UNDER A NOTICE OF INTENTION TO TENDER

[5] Learned Counsel for the Defendant, Mrs. Denise Senior-Smith raised a preliminary point which was that the Medical Reports were not disclosed under the Claimant's List of Documents and the contents of the Medical Reports were not pleaded. She therefore objected to the Medical Report of Dr. Paula D. Estwick dated the 19th December 2016 as well as the Medical Report of Dr. Geoffrey D. Williams dated the 23rd October 2017.

[6] Mrs. Senior-Smith advanced her submissions by placing heavy reliance on ***Trudy Ann Silent Hyatt v Rohan Marley and Anor*** *[2023] JMCA Civ. 24 to addres*s the question of whether future medical expenses are a creature of general damages. She submitted that the Medical Reports should not be accepted by the Court as nothing foreshadows them since they did not appear in the List of Documents. She argued that based on the authority cited, the Claimant cannot give evidence on future medical expenses as this was not pleaded.

[7] In opposition to Mrs. Senior-Smith's position, Learned Counsel for the Claimant, Mr. Kinghorn submitted that the Court ought to treat the issue of admissibility of the Medical Reports in the context of the statutory right afforded to the Claimant so that these documents can be admitted under the provisions of the Evidence Act. To bolster his point, he placed reliance on the authority of ***Fenella Kennedy Holland and others v Dawn Paris and others –*** *Claim No*. 2008HCV01916 delivered on June 29 and 30, 2009.

[8] In treating with the issue of pleadings, Learned Counsel submitted that the pleadings in respect of the Claimant's injuries are extensive and more than sufficient to capture the contents of both Reports.

[9] In terms of the Medical Report of Dr. Paula D. Estwick, Learned Counsel argued that the Claimant's Particulars of Claim gives an adequate description of the injuries sustained by the Claimant as a result of the vicious attack of the Defendant's dog. He posited that the Report does not go outside of the parameters of the pleadings and does not purport to do anything that was not already foreshadowed by the Particulars of Claim.

[10] The Medical Report of Dr. Geoffrey D. Williams deals with future medical expenses. Mr. Kinghorn drew the Court's attention to the authority of ***Trudy Silent-Hyatt v Rohan Marley*** *supra* in which the Court of Appeal held that Future Medical expenses is a category of General Damages. Counsel therefore submitted that it would be wholly incorrect to plead that expense as an item of Special Damages. He argued that it is properly categorized as General Damages and is a

matter for the Court to accept or reject the evidence having regard to the nature of the injury revealed in the medical reports and the evidence of the Claimant.

[11] Learned Counsel posited that the Defendant was served with this Medical Report since February 10, 2023, and did not make any objection and this therefore not only puts the Defendant on notice but also means that the Defendant was served with the very document that details the Future Medical expenses that the Claimant intended to prove at the trial.

[12] Learned Counsel concluded his submission by urging the Court to admit the Medical Report into evidence as it was revealed in the Notice of Intention to Tender filed and served upon the Defendant on February 16, 2023.

[13] At the end of these submissions, the Court found favour with the submissions of Counsel for the Claimant. The Court ruled that the Medical Reports were admissible under the Evidence Act and properly fell under the category of General Damages.

ISSUES

[14] The main issues in this case surround the principle of negligence and are broken down as follows:

i. Whether the Defendant owed a duty of care to the Claimant;

ii. If a duty of care is found to be owed to the Claimant, whether he breached that duty of care;

iii. Whether the Claimant suffered damage as a result; and

iv. If she suffered damage, what was the nature of that damage and what quantum of damages would the Defendant be liable to pay.

THE CLAIMANT'S EVIDENCE

[15] The Claimant's evidence states that on the date aforementioned, she was walking along Orchid Drive at approximately 6:35 p.m. when she observed four (4) dogs coming from an unfenced property owned by the Defendant. She stated that the

four (4) dogs attacked her and one of the dogs, a Rottweiler bit her on her left thigh causing her to fall. She immediately felt excruciating pain to her left thigh and screamed for help. She tried relentlessly to break free from the dogs and had to be assisted by a neighbour who used an umbrella to remove them off her person. She used her cell phone to hit the Rottweiler in his face and he eventually released her left thigh and retreated to the Defendant's premises.

[16] She recounted that after being bitten by the dog, she felt dizzy and experienced a weak sensation in her left leg that prevented her from standing. She was taken to the Accident and Emergency section of the St. Ann's Bay Hospital where she was examined by a Doctor who administered three (3) injections to her left thigh. She received eleven (11) stitches along with pain medication. She was advised to return for the dressing of the wounds and then she was discharged. Whilst, at her home, she continued to feel pain in her left thigh and left knee which were swollen. This led her to seek treatment from Dr. Srivardhan Chilekampali at Tretzel Medical Centre in Discovery Bay in the parish of Saint Ann on the 18th of May 2016.

[17] She subsequently consulted Dr. Geoffrey Williams, a Consultant Plastic and Reconstructive Surgeon for a review of her injury. He examined her scar and informed her of the cost of surgery to improve its appearance.

[18] In respect of her loss of amenities, she gave evidence of ongoing physical challenges despite the fact that the incident occurred eight (8) years ago. She indicated that simple activities that she was able to do prior to the incident now pose a challenge. Following the incident, she had difficulty taking care of her personal hygiene as well as tending to her daily needs. She also experienced challenges walking, standing, taking a bath and cooking. She stated that she now has an acute fear of dogs and is unable to walk near a house that has them.

[19] The Claimant stated that as a result of her injury, she lost the opportunity to earn **Four Hundred and Fifty Canadian Dollars (CDN$450.00)** weekly as a Nursing Aide in Canada. She stated further that before the incident, she was the breadwinner for her family but since the incident, she has not been able to provide

for her family because of the '*constant pain in her left thigh*.' It is instructive that no documentary evidence was provided in proof of this financial loss.

[20] In outlining her transportation expenses, she stated that she spent a total of **Ten Thousand Dollars ($10,000.00)** on visits to the various doctors, hospital and medical centres. The Claimant explained the absence of documents in support of this expense as owed to the fact that taxi operators do not issue receipts to passengers.

[21] In cross-examination, it was suggested to the Claimant that only two (2) dogs attacked her and not four (4), she initially responded that two (2) dogs rushed towards her, but it was the Rottweiler who attacked her. She then disagreed with Counsel's suggestion that only two (2) dogs attacked her and not four (4) dogs. She further stated that there were four (4) dogs, two (2) dogs came towards her and one (1) dog bit her. She agreed that Mr. Senior took her to the hospital and accepted that on the 18th of May 2016 when she sought further treatment, she was able to stand. She insisted that although she was able to stand, she could not do so well enough as her foot was swollen. She explained to Counsel that her reason for considering plastic surgery was to tend to the huge scars that were left by the attack.

[22] She was questioned about the type of clothing that she wears and whether they would not cover the scars. She explained that her church clothing would not always be long enough to do so. There was some contention that her account was inconsistent as while she gave viva voce evidence that she was wearing a pair of shorts on the day of the incident, she acknowledged that in her Witness Statement she said that she was wearing jeans pants.

[23] She accepted that she had not provided any information on her transportation expenses to assist the Court on this award and agreed that the same was true for the loss of earnings. When Counsel suggested that it is not true that she was unable to walk for two (2) weeks after the incident, she maintained that though she tried to walk, she was unable to walk properly. She insisted that although the

Defendant had said he would assist, he only paid for her medication on one (1) occasion.

THE DEFENDANT'S EVIDENCE

[24] The Defendant's evidence-in-chief is contained in his Witness Statement dated January 27th, 2023. He acknowledged that he is the owner of two dogs, a Rottweiler as well as a Mongrel. At the time of the incident, the Rottweiler was a two (2) years old puppy. Both dogs had been obtained to deter burglars. He recounted that on May 16th, 2016, he had chained the Rottweiler to a steel attached to a concrete wall at the front of his house. The mongrel was at the back of the house.

[25] He recalled that on the day in question, he heard barking dogs and a scream. He then saw his Rottweiler coming through his gate and immediately realized that it had gotten loose from the area where it had been chained. He grabbed the Rottweiler's chain, ushered it to the back of the house and chained it again. The Mongrel was still in the yard.

[26] He saw the Claimant at his neighbour's house holding on to her leg which was bleeding. He did not see any dog rush the Claimant, neither did he see the Claimant jumping the wall. He denied that his neighbour had a wall around his house at the time. He recounted that he walked across the road to the Claimant and she said, "*Mr. Senior, you dog bit me you dog bite me*."

[27] He assisted the Claimant to the St. Ann's Bay Hospital where she was treated and he covered the cost of the medication prescribed. He drove her home and ensured that she was able to manage on her own without much difficulty. He also followed up with her for four (4) days.

[28] The Claimant informed him that she wanted to consult a private doctor. He offered to pay the medical cost but she refused. He insisted that he never witnessed any dog attack the Claimant and denied that he was negligent as he did not leave the

Rottweiler unchained. He explained that the Rottweiler freed itself and that this was the first time that he had broken free from his chain.

[29] In cross-examination, he stated that he secured both dogs by tying them in his yard and had done so on the 15th of May 2016. He maintained that the dogs are always chained before he goes to work at 7:30 am and they are still chained when he returned from work. When asked whether he chained the dogs because of their propensity to bite, he responded by saying; *'No Sir, tief break into my house two (2) times so I chain them at the front'.* When asked by Counsel if the Rottweiler had a propensity to bite, he said that every dog has the propensity to bite. He disagreed with the suggestion that he got the dog to guard his yard and insisted that the Rottweiler was a friendly dog.

[30] In cross-examination, Mr Senior insisted that he had never seen his dogs attack anyone before the incident. He agreed however that he had seen them bark at persons. He initially denied seeing his dogs pull against their chain whilst barking at persons passing but subsequently conceded this may have occurred when the dogs in his neighbour's yard were also barking. This concession was later retracted. It was suggested to him that both dogs got loose on the 16th of May 2016 and he replied that it was one of them. He agreed that it was the 'friendly Rottweiler' who had burst his chain which was big and made of iron.

[31] In further cross-examination, he stated that the chain had not been burst, it was the collar that had been broken. He was the person who had placed the collar, made from a leather belt, around the Rottweiler's neck. The collar had been placed on the Rottweiler from he was a puppy and he was about 2-3 years at the time of the incident. He never considered changing it as he did not believe that the Rottweiler was mature enough for it to be changed. When questioned about the strength of the collar, he stated that he tested it when he bathed the Rottweiler so he knew that it was strong. The last time he tested it was a week before the incident. He described the testing process as placing his hands around the collar to determine if it was strong and firm.

[32] The Defendant was questioned about his assertions in respect of the collar and agreed that he had not said in his Witness Statement how the Rottweiler was able to get free. He explained that the wall at his home is between 5 to 6 feet. When asked whether he was aware that the Rottweiler could jump over a 5-to-6-foot wall, he replied that he was not aware as the Rottweiler has never done so in his presence.

[33] The Defendant agreed that there is a difference between a Rottweiler and a Mongrel and accepted that he had not done any research on Rottweilers before obtaining one for himself. He was questioned as to the current whereabouts of the dog and replied that since the incident, he had removed the dog from his premises.

[34] He was cross-examined about the contents of paragraph 4 of his Defence which states '*the Defendant will instead say that it was only one dog that attacked the Claimant after bursting its dog chain and jumping over the Defendant's wall*." He was asked if the dog referred to was the Rottweiler and replied that he was not sure. When asked how many dogs escaped from his yard that day, he stated that it was the Rottweiler alone that had escaped.

[35] The Defendant insisted that when he went outside, he saw four (4) mongrel dogs and his Rottweiler but he never witnessed the Rottweiler bite the Claimant. He disagreed with the suggestion that this was what had occurred. The Defendant acknowledged that he had seen the dogs surround the Claimant and retrieved his dog from among them. He also admitted that he saw injuries to her leg and thigh.

SUMMARY OF SUBMISSIONS ON LIABILITY FOR THE CLAIMANT

[36] The crux of Mr. Kinghorn's submission is that the evidence was overwhelmingly in support of the claim for negligence on the part of the Defendant. He submitted that the Court should accept the evidence of the Claimant and find that liability for the injuries sustained by the Claimant lies solely with the Defendant. Mr. Kinghorn urged the Court to reject the evidence of the Defendant.

[37] Mr. Kinghorn posited that the Defendant's evidence and the admissions in his Defence laid sufficient foundation for the Court to come to a reasonable conclusion that he has admitted liability. Counsel outlined that in light of the evidence, there is no dispute as it relates to the following:

i. The Defendant is the owner of a Rottweiler dog;
ii. The Claimant was bitten by a Rottweiler dog;
iii. The Defendant's Rottweiler dog escaped from where it had been tied; and
iv. At least one of the Defendant's dogs attacked and bit the Claimant.

[38] Mr. Kinghorn submitted that the Defendant admitted that he did not witness the attack upon the Claimant. He asked the Court to note that the Defendant actually confirmed that he saw his Rottweiler, which was unfastened, coming through his gate after he heard the cry from the Claimant. Based on this admission, Learned Counsel submitted that the Court should find that the Defendant is liable for the injuries sustained by the Claimant.

SUMMARY OF SUBMISSIONS ON LIABILITY FOR THE DEFENDANT

[39] Learned Counsel for the Defendant Mrs. Senior-Smith did a comparative analysis of the Claimant's evidence in her Witness Statement and the Defendant's evidence in his Witness Statement in an effort to establish the credibility of the parties. She submitted that the Claimant's narrative as to how many dogs attacked her was not true. Learned Counsel adumbrated that in her Particulars of Claim, the Claimant said that two (2) dogs rushed out at her, whilst in her Witness Statement, she said that it was four (4) dogs. Mrs Senior-Smith contended that there was no amendment to the pleadings to address this issue and submitted that this is a material inconsistency.

[40] Learned Counsel posited that another material inconsistency that arose in the Claimant's pleadings is that she averred that two (2) dogs bit her but whilst giving viva voce evidence, she said only one (1) dog bit her. Learned Counsel further submitted that the Claimant did not give any evidence to suggest that the dog that

bit her was not properly secured and noted there was actually no evidence alluding to the same.

[41] She contended that the Defendant made it clear under cross-examination that he did not see his dog bite the Claimant. It was the Claimant who said his dog bit her. The Defendant said his neighbour's dogs were also there. She argued that it was the Claimant's duty to prove her case of negligence against the Defendant and submitted this was not done.

APPLICABLE LAW

[42] The principles in relation to the law of negligence were laid down in the locus classicus of ***Donoghue v Stevenson*** *[1932] UKHL 100* where Lord Atkins stated as follows:

> *'.. reasonable care must be taken to avoid an act or omissions which a reasonable man can foresee may cause injury to a neighbour".*

[43] This principle was considered by our Court of Appeal in ***Glenford Anderson v. George Welch*** *[2012] JMCA Civ.43* in which Harris JA stated at paragraph 26 of the judgment as follows:

> *"It is well established by authorities that in a claim grounded in the tort of negligence, there must be evidence to show that a duty of care is owed to the Claimant by the Defendant, that the Defendant acted in breach of that duty and that the damage sustained by the Claimant was caused by the breach of that duty ......"*

[44] In ***Donoghue v Stevenson*** *supra*, the care that is to be taken is based on the foreseeability test and the standard is that of the ordinary reasonable man placed in the same circumstances as the Defendant. As such in cases involving persons who are dog owners, the standard of care is that of the ordinary and reasonable dog owner.

[45] The definition of Negligence was also examined in the text Charlesworth and Percy on Negligence, the 9th Edition wherein it was stated at paragraph 101 as follows:

(1) a state of mind in which it is opposed to intention;
(2) careless conduct; and
(3) the breach of a duty to take care that is imposed by either common law or statute law.

[46] In light of the foregoing principles of law, the Claimant must show, on a balance of probabilities, that the Defendant owed her a duty of care, he breached this duty when he failed to properly secure his dog, she was bitten by the dog and the injuries she sustained from the dog bites caused her damage.

[47] In the Court of Appeal decision of ***Adele Shtern v Villa Mora Cottages Ltd. and Monica Cummings*** *[2012] JMCA Civ. 20*, Morrison JA (as he then was) analysed the requirements for proof of Negligence as follows:

> *"The test of whether a duty of care exists in a particular case is, as it is formulated by Lord Bridge of Harwich, after a full review of the authorities, in the leading modern case of* ***Caparo Industries plc v Dickman*** *[1990] 1 All ER 568, 573-574: "What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other." As regards the question of proof of a breach of the duty of care, there is equally no question that the onus of proof, on a balance of probabilities, that the defendant has been careless falls upon the claimant throughout the case (see Clerk & Lindsell, op. cit., para. 8- 149);*[1]

[48] The dictum in the Privy Council decision in ***Ng Chun Pui and Ng Wang King v Lee Chuen Tat and another*** *PC Appeal No. 1/1988* is also instructive. Lord Griffiths delivered the judgment of the Board and stated as follows:

> *"The burden of proving negligence rests throughout the case on the plaintiff. Where the plaintiff has suffered injuries as a result of an accident which ought not to have happened if the defendant had taken due care, it will often be possible for the plaintiff to discharge the burden of proof by inviting the court to draw the inference that on the balance of probabilities the defendant must have failed to exercise due*

[1] Paragraph 49

care, even though the plaintiff does not know in what particular respects the failure occurred…

So in an appropriate case, the plaintiff establishes a prima facie case by relying upon the fact of the accident. If the defendant adduces no evidence there is, nothing to rebut the inference of negligence and the plaintiff will have proved his case. But if the defendant does adduce evidence that evidence must be evaluated to see if it is still reasonable to draw the inference of negligence from the mere fact of the accident. Loosely speaking this may be referred to as a burden on the defendant to show he was not negligent, but that only means that faced with a prima facie case of negligence the defendant will be found negligent unless he produces evidence that is capable of rebutting the prima facie case… it is the duty of the judge to examine all the evidence at the end of the case and decide whether on the facts he finds to have been proven and on the inferences he is prepared to draw he is satisfied that negligence has been established." (Emphasis added).

[49] The burden is on the Claimant to establish a prima facie case by showing that the incident occurred, she can however ask the court to draw an inference of negligence on the part of the Defendant. To establish a prima facie case, the Claimant must give credible evidence on which the court can rely. Her account must satisfy the Court that the incident was more likely to have occurred than not. The Claimant must be able to demonstrate the cause or likely cause of the incident.

[50] In the instant case, the Defendant denies that his dog bit the Claimant and thus challenged whether he is the cause of the Claimant's injuries. Applying the principle enunciated in the ***Ng Chun Pui*** case, if there is an inference of negligence to be drawn, the Defendant would be required to adduce evidence to rebut that inference. However, the Claimant must first adduce sufficient evidence to merit the drawing of an inference of negligence.

DISCUSSION/ANALYSIS

Whether the Defendant owed a duty to the Claimant to ensure her safety? If a duty of care is found to be owed to the Claimant, whether the Defendant breached that duty of care?

[51] It is not in dispute that a statutory liability is imposed on the owner of a dog to ensure that it does not cause harm to others as seen at Section 2 of the now

repealed, Dogs (Liability for Injuries by) Act. This legislation has not however been pleaded or otherwise relied on by the Claimant. The matter will then turn on whether the evidence provided is sufficient to show that the common law duty of care has been established and whether it had been breached.

[52] It is clear from the competing accounts of the witnesses that the resolution of this claim will turn upon the careful consideration of the relevant legal principles as well as the facts which are found to be proved. As such, the issues were examined with this approach in mind.

[53] Although the issues of whether the Defendant owed a duty of care to the Claimant and whether it had been breached had been listed separately, I am satisfied that they are so inextricably intertwined that they can be disposed of together. It is not in dispute that while the accounts provided by the parties agree on some factors, they are diametrically opposed on these questions and liability as a whole.

[54] The first question to be addressed is whether the Defendant owed a duty of care to the Claimant. It is trite law that special circumstances can give rise to a duty of care where damage has resulted from negligence. The case of ***Donoghue v Stevenson*** *supra* is instructive on this point. In that case, the House of Lords held that a manufacturer owed a duty of care in negligence to the ultimate consumer of his products. Lord Atkin gave a legal definition for the Neighbour principle. In explaining who a neighbour is, he said the following:

> *"persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."*

[55] In treating with the issue of foresight and reasonable contemplation of harm, Lord Atkin emphasized the need for a relationship of proximity between the parties, but this does not necessarily mean that the plaintiff must be in a close physical or special relationship to the Defendant. Proximity is an appropriate label to describe the relationship between parties and the facts that give rise to a duty of care.

[56] In the authority of ***Yuen Kun Yeu v Attorney General of Hong Kong*** *[1988] A.C.175*, Lord Keith opined that the expression, "proximity or neighbourhood" is a composite one importing the whole concept of necessary relationship between the Plaintiff and the Defendant.

[57] The question of whether a duty arises depends on the degree of control and responsibility which the Defendant had over the situation which involved potential injury to the Claimant. The Claimant's evidence is that she was walking along Orchid Drive in Bellaire, Runaway Bay, when she observed four (4) dogs rushing from an unfenced property which is owned by the Defendant. She further stated that one of the dogs, a Rottweiler pounced upon her and bit her on her left thigh. The Defendant's evidence is that he is the owner of a Rottweiler dog that is kept at the front of his home.

[58] The evidence indicates that the Claimant was an innocent by-passer. The Defendant, being a dog owner was by his own admission unaware that at the time in question, his dog was unrestrained and had managed to leave the yard to go outside and create mischief, harm and danger. Based on the foregoing, the neighbour principle establishes a baseline of liability that a reasonable dog owner is expected not only to secure his dogs but also to foresee harm or damage to an innocent by-passer if his dog is unrestrained. By the Defendant's own knowledge, he was inside the house, he knew the Rottweiler was at the front of the premises and would bark at persons passing but he made no checks to ensure it was secure. I therefore find that in these circumstances, the Defendant owed a duty of care to the Claimant to prevent his dog from getting loose and causing harm to her.

[59] Having found that the Defendant owes the Claimant a duty of care, it was then incumbent on him to ensure that his dogs were properly secured to ensure that there was no breach of this duty. The determination of whether there was a breach turns on an assessment of the evidence to assess whether the Defendant's conduct fell below the standard of care that the circumstances required. This is a question of fact to be determined based on an objective standard.

[60] In conducting this assessment, the test of what a "reasonable man" would have done in the defendant's position, is relevant. That is, whether a reasonable man placed in the same circumstances would have acted as the Defendant did. In the landmark case, ***Blyth v Birmingham Waterworks Co*** *(1856) 11 Exch 78*, Alderson B provided an explanation of the "reasonable man test "when he stated that:

> "*negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.*"

If the Defendant is found to have acted contrary to what the reasonable or prudent man would have done, and if his failing caused the harm alleged, he would have breached this duty of care and be liable for negligence.

[61] The Defendant's account is that he has been the owner of the Rottweiler since it was a puppy and had placed a collar around its neck from that stage. At the time of the incident, the Rottweiler had matured to the age of approximately 2-3 years old but the Defendant did not think it necessary to replace this collar even though the dog was older and bigger.

[62] It is the Defendant's evidence that he tested the strength of the collar by placing his hands around it when he bathed the Rottweiler. An examination of this testing process reveals that not only was it wholly insufficient to adequately determine the strength of the collar, given the growth of the dog, it was also insufficient to inform him whether the collar would hold if it was subjected to force such as being pulled on by the dog. I find that a reasonable or prudent person in the same circumstances as the Defendant would have tested the strength of the collar by applying force to it in order to know its strength and durability. The method of testing which he says he applied falls well below the standard of care required of a reasonable man.

[63] In my assessment of the issue whether the Defendant had breached his duty of care, a question was also raised in respect of his credibility on this point. While the

Claimant had been consistent in asserting that the dog left the yard and attacked her, the Defendant has actually given conflicting accounts on what occurred. In his Defence, he accepted that his dog had left the yard and attacked the Claimant but in his witness statement and evidence, he denied that his dog had been involved in this attack.

[64] It was also noted that while the Defendant had professed ignorance as to how the Rottweiler got loose in his Defence, in his evidence, he initially stated that the chain had been broken but in cross-examination, he stated that the collar had been broken. These changing accounts raised doubts as to the reliability of the Defendant's account and appeared to have been fabricated by him in circumstances where he had been inside the house and did not actually see what had occurred.

[65] This conclusion finds support in yet another conflict which arose on his evidence where he stated that when he went outside his house he saw the Rottweiler re-entering the yard but in cross-examination, he agreed that when he went out in the street, he separated his dog from the other dogs and placed him back inside.

[66] Having carefully assessed the evidence, I find as a fact that the Defendant failed to adequately secure the dog. Although he sought to assert that he would check the collar with his hands, Mr. Senior made no mention of any maintenance of the chain and/or collar to ensure that the dog would be safely secured and the strength of both were preserved. There was also no evidence of periodic checks made to determine if the chain was still secured to the collar or to the steel in the wall at the front of the house. On a balance of probabilities, I find that the Rottweiler was not properly secured and was able to break free of his collar and chain in order to leave the yard and attack the Claimant.

[67] This situation would not have occurred if the Defendant had not been negligent. For the foregoing reasons, the Court finds that the Defendant had breached the duty of care owed to the Claimant.

Whether the Claimant suffered damage as a result of the breach?

[68] In order to persuade the Court to make an order for an award of damages, the Claimant must show that the breach resulted in, caused or materially contributed to the injury. The risk of injury must be reasonably foreseeable. Lord Denning's statement in ***Cork v Kirby Maclean Ltd*** *[1952] 2 All ER 402* at page 406 is relevant, where he stated:

> *"[i]f you can say that the damage would not have happened but for a particular fault, then that fault is in fact a cause of the damage".*

[69] In applying this principle to the facts which I have found to be proven, the question to be answered is whether the harm to the Claimant would have occurred, but for the Defendant's breach of duty. The evidence indicates that the Claimant was bitten by a Rottweiler owned by the Defendant.

[70] The Medical Reports which have been exhibited by the Claimant, disclose that she sustained injuries to her thigh from dog bites. Although the Defendant took issue with whether his dog was involved, he did not reject the contention that the Claimant's injuries were caused by a dog bite. The Court having found that the Rottweiler owned by the Defendant had bitten the Claimant, it is evident that but for the Defendant's negligent conduct in failing to secure his dog and premises, the damage and/or injury suffered by the Claimant would not have happened. Additionally, the damage suffered by the Claimant is not too remote a consequence of the breach of duty by the Defendant.

[71] It is for the foregoing reasons that I find that there is sufficient causal link between the Defendant's failure to secure his dog and the bite wounds sustained by the Claimant. I am satisfied based on the evidence that but for the Defendant's negligence in failing to properly secure his dog, the Clamant would not have suffered this injury or damages.

THE ISSUE OF CREDIBILITY

[72] Before moving to the nature and quantum of damages, it should be noted that in coming to a decision on the question of liability, a careful assessment of both parties' versions of the facts and their demeanour was conducted. In doing so, I observed that both parties' evidence contained material internal inconsistencies.

[73] In respect of the Claimant, the Court noted two significant inconsistencies in her account. In her Particulars of Claim, she stated that two (2) dogs rushed out at her, whilst in her Witness Statement, she said that it was four (4) dogs. She then adopted the narrative in her Witness Statement that the number of dogs was four (4). Another inconsistency that arose in her pleadings was her evidence that she was bitten by two (2) dogs. However, whilst giving her viva voce evidence, she indicated that only one (1) dog bite her.

[74] Despite these inconsistencies, I did not find that the Claimant was making a concerted effort to embellish her account in relation to material matters. While she may have vacillated between the number of dogs involved in this attack, she was adamant that she was bitten by the Defendant's Rottweiler. She candidly accepted that she had not provided any proof of transportation expenses and loss of income and I found her to be a witness of truth. I did not believe that the inconsistencies went to the root of her credibility and I found her to be a truthful and reliable witness.

[75] The Defendant appeared to be a mature and intelligent man. However, I was not impressed with his demeanour especially under cross-examination. His responses did not appear to be straightforward and he demonstrated a clear propensity to vary his account. His contradictory accounts of how the Rottweiler became loose also raised questions as to his veracity.

[76] His reliability was further undermined when he initially stated that the Rottweiler was a small dog just a foot high, then later conceded it was bigger than his mongrel

dog and had managed to jump a wall which was five or six feet high in order to leave the yard.

[77] Additional questions were raised as to his honesty, as although he initially stated he had obtained the dog because he had been a victim of burglary, he then denied that this was the reason. He also sought to describe the Rottweiler as a friendly puppy, all of which contradicted its effective use as a preventive measure against burglars who had broken into his house. His insistence that the dog was always restrained was also contrary to the purpose he gave for obtaining it as a restrained dog at the front of his premises would have given little to no protection against burglars.

What is the nature of the damages and what quantum of damages is the defendant liable to pay?

[78] The nature and quantum of damages are dealt with below under their respective headings.

SPECIAL DAMAGES

[79] Special damages are compensatory and are designed to return persons to the position that they were in prior to the injury based on measurable dollar amounts of actual loss. They are normally reduced to a "*sum certain*" at the trial: ***Barbara McNamee v Kasnet Online Communications RM Civil Appeal No.15 of 2008*.**

[80] It is an established principle that special damages, which are generally capable of exact calculation, must be specially pleaded and proved and therefore in any action in which a Claimant seeks to recover special damages, he has a duty to prove his loss strictly. (See for e.g. ***Lawford Murphy v Luther Mills*** *(1976) 14 JLR 119*). The authorities however show that the Court has some discretion in relaxing the rule in the interest of fairness and justice, depending on the particular circumstances of the case. (See for e.g. ***Julius Roy v Audrey Jolly*** *[2012] JMCA Civ. 63*).

[81] Mrs Senior-Smith contended that if the Court should find that the Defendant was negligent, then the Claimant was only able to prove Special Damages in the sum of **Fifty-One Thousand Dollars ($51,000.00).**

[82] The Claimant requested that she be compensated for special damages for which she produced the necessary documents. The documentation in proof of these expenses were admitted into evidence as exhibits by agreement. The following documents were admitted into evidence:

a. Medical Report of Dr. Bertilee Burgess dated the 18th day of October 2017 from St Ann's Bay Hospital
b. Medical Report of Dr. Srivardhan Chilekampalli dated August 4th 2016
c. Medical Report of Dr. Paula Estwick dated December 19th 2016
d. Medical Report of Dr. Geoffrey D. Williams dated October 23rd 2017
e. Receipt # 36052 dated June 21, 2016 from Tretzel Medical Centre - $3300.00
f. Receipt # 36507 dated July 11, 2016 from Tretzel Medical Centre – $1500.00
g. Receipt # 35532 dated May 27, 2016 from Tretzel Medical Centre – $1000.00
h. Receipt # 36512 dated July 11, 2016 from Tretzel Medical Centre – $300.00
i. Receipt # 35503 dated May 26, 2016 from Tretzel Medical Centre – $1000.00
j. Receipt # 35806 dated June 10, 2016 from Tretzel Medical Centre – $1000.00
k. Receipt # 35557 dated May 30, 2016 from Tretzel Medical Centre – (nil figure stated)
l. Receipt # 35890 dated June 14, 2016 from Tretzel Medical Centre – $1500.00
m. Receipt # 35345 dated May 18, 2016 from Tretzel Medical Centre – $1500.00
n. Receipt # 35348 dated May 18, 2016 from Tretzel Medical Centre – (nil figure stated)
o. Receipt # 37430 dated August 8, 2016 from Tretzel Medical Centre – $5000.00
p. Receipt # 35730 dated June 7, 2016 from Tretzel Medical Centre – $1000.00
q. Receipt # 35432 dated May 24, 2016 from Tretzel Medical Centre – $2500.00
r. Receipt # 35626 dated June 1, 2016 from Tretzel Medical Centre – $1000.00
s. Receipt # 35675 dated June 3, 2016 from Tretzel Medical Centre – $1000.00
t. Receipt # 35739 dated June 7, 2016 from Tretzel Medical Centre – $15000.00
u. Receipt # 84629 dated May 25, 2016 from Runaway Bay Community Pharmacy – $4777.00

v. Receipt # 91567 dated July 11, 2016 from Runaway Bay Community Pharmacy – $2790.00

w. Receipt # 144239 dated June 28, 2017 from Runaway Bay Community Pharmacy – $3825.24

x. Receipt # 87617 dated June 14, 2016 from Runaway Bay Community Pharmacy – $3670.00

[83] On a review of the receipts presented in respect of sums paid for medical visits, medical reports and medical examinations, I am satisfied that these expenses had been reasonably incurred as a result of the injuries sustained in this incident and I am prepared to make an award to the Claimant in the sum of **Fifty-One Thousand Six Hundred and Sixty-Two Dollars and Twenty-Four Cents ($51,662.24).**

Transportation

[84] Where documentary proof of an expense claimed is unavailable, the Court has a measure of discretion as to whether this expense can be awarded. (see for e.g. ***Attorney General of Jamaica v Tanya Clarke (nee Tyrell)****, SCCA No. 109/2002;* ***Desmond Walters v Carlene Mitchell*** *[1992] 29 JLR 173.*

[85] The Claimant seeks to recover the sum of **Ten Thousand Dollars ($10,000.00)** for transportation costs. She did not however provide any details to the Court in respect of this item. Specifically, there was no information provided in terms of the number of visits and the cost of same whether by bus or taxis. When challenged by Counsel to provide a basis for this award, she stated that she had not been provided with receipts by the taxi drivers. Additionally, while this expense appears in the Witness Statement and submissions filed on behalf of the Claimant, it was never pleaded by her and her Particulars of Claim were never amended in respect of same.

[86] On my review of this expense while there were no documentary records in support of same, I found that trips were made for the purpose of obtaining medical care or treatment. A careful review of the medical receipts show that save for the consultation with the Plastic Surgeon in Montego Bay, all the other medical visits

were within the Saint Ann area. The challenge however lies in the fact that the sum that she claims was expended was in no way accounted for by her. While the amount stated is not unreasonable, the Claimant would be impeded in recovering same in the absence of cogent evidence to justify this award. In the circumstances, I make no award for transportation.

Loss of Earnings

[87] In relation to loss of earnings, the Claimant seeks to recover the sum of **One Million One Hundred and Forty-Three Thousand Five Hundred and Eleven Dollars ($1,143,511.00)**. Her evidence is that due to her injuries arising from the incident, she lost income as a result of her inability to work as a Nurse's Aide in Canada. She stated that her loss of income covered a period of twenty (20) weeks at **Four Hundred and Fifty Canadian Dollars (CDN$450.00)** per week. In cross-examination on this point, Ms Lewars initially sought to assert that she had provided a letter but eventually conceded that there was no documentary proof in support of this sum.

[88] While the Claimant has asserted this loss, in the absence of documents supporting same, I am unable to identify an evidential basis on which this sum can be awarded as being reasonable or specifically proved. While the case law shows that there are instances in which a Court can exercise its discretion to make an award for special damages without documentary proof, I am not persuaded that it would be appropriate to do so in this situation for the reasons stated above. Accordingly, the request for an award for loss of earnings is refused.

[89] The Claimant is therefore awarded the sum of **Fifty-One Thousand Six Hundred and Sixty-Two Dollars and Twenty-Four Cents ($51,662.24)** as special damages in this claim.

GENERAL DAMAGES

Medical Evidence of Dr. Bertilee Burgess

[90] Particulars of the Claimant's injuries were outlined in the Medical Report from the St. Ann's Bay Hospital prepared by Dr. Bertilee Burgess and dated the 17th September 2018.

[91] The Summary indicated that Ms. Lewars presented with a number of unrelated medical issues including hearing voices, insomnia, feeling fearful and forgetfulness following the dog biting incident on the 7th October 2012. She was examined and treated. The treatment included sutures and medication was prescribed. She was advised to follow-up in six (6) weeks.

Dr. Srivardhan Chilekampali

[92] Dr. Chilekampali treated the Claimant after she had initially been seen at the Hospital. In his report of October 12th, 2020, he stated that on assessing the Claimant, he observed that she had complaints about pain and swelling to her left thigh and left knee.

[93] A physical examination revealed that her vitals were stable, her left thigh had a 4cm sutured laceration over the anterior surface of her left thigh with multiple deep puncture wounds with soft tissue swelling with cellulitis, erythema and edema around the wounds with sero sanguinous discharge. She also had puncture wounds with lacerations over her left knee, swelling and restricted movements of the left knee joint.

[94] The Claimant was diagnosed as having infected dog bite wounds [deep] to the left thigh and knee with cellulitis. She was given a course of antibiotics and analgesics. She was advised to return daily for dressing and follow-up.

Dr. Paula Estwick

[95] Dr. Paula Estwick's report of December 16th 2016 indicates that she examined Ms. Leonie Lewars on the 16th of May 2016 for the purpose of evaluating and managing

her injuries. The evidence of Dr. Estwick is that the Claimant suffered multiple dog bites to her left lower thigh and upper leg. She noted that the bite on the thigh was the worst of those suffered by Ms. Lewars and that it caused a laceration which was deep into the subcutaneous tissue and muscle. The laceration became infected and it continues to cause Ms. Lewars severe pain to that region as well as the entire left lower limb. She observed that Ms. Lewars suffered from tissue damage as a consequence of the laceration.

Dr. Geoffrey Williams

[96] The medical report of Dr. Geoffrey Williams dated the 23rd of October 2017 reveals that Ms. Lewars' injuries were confined to her left thigh. He observed that she had four (4) scars on the thigh just above her knee which are measured at 3,1.5,2 and 0.75 cm respectively. He noted that the 3cm scar is also the widest with a width of 1cm. It is his medical opinion that her scars are unsightly.

[97] The report also stated that Ms. Lewars could benefit from reconstructive plastic surgery to minimize/reduce her scarring. He indicated that despite the benefits of sophisticated plastic surgery techniques, Ms. Lewars will continue to bear the tell-tale signs of the incident. The Doctor estimated that the cost of the surgery is approximately **Four Hundred and Fifty Thousand Dollars ($450,000.00)** which is inclusive of Surgeon and Anaesthetist fees as well as Operating cost.

SUBMISSIONS ON DAMAGES FOR THE CLAIMANT

[98] On the question of an appropriate award for General Damages, Mr. Kinghorn directed the Court's attention to the case of ***Morain Hurst v Webster Radway*** *[2012] JMSC Civ. 139*. Learned Counsel submitted that it cannot be reasonably argued that the Claimant did not sustain very serious injuries as a result of this attack by the Defendant's dog.

[99] Mr Kinghorn asked the Court to note the contents of the Medical Report of Dr. Paula Estwick, which was dated approximately seven (7) months after the incident

and indicated the level of suffering that the Claimant experienced. Her report detailed the following:

> "*Ms. Lewars was assaulted by a dog on the 16th day of May 2016 and suffered multiple dog bites to her left lower thigh and upper leg. The bite on the thigh was the worst of those suffered by Ms. Lewars. This bite caused a laceration which was deep into the subcutaneous tissue and muscle, subsequently became infected and still continues to cause severe pain to that region and entire left lower limb."*

Counsel contended that this extract makes it clear that the Claimant suffered significantly and severely from the injuries caused by the Defendant's dog.

[100] Mr Kinghorn submitted that the appropriate award for general damages would be in the sum of **One Million Five Hundred Thousand Dollars ($1,500,000.00).** He relied on the case of ***Morain Hurst v Webster Radway*** *supra,* in which the Claimant sustained the following injuries from an attack by dogs:

a. Multiple abrasions and lacerations to the upper neck which were 75% healed;
b. A 2cm by 1cm laceration to the left lateral aspect of the neck almost fully healed;
c. A 6cm linear laceration to the left side of the neck non sutured and 75% healed;
d. Linear lacerations to the right thigh almost healed; and
e. Three puncture wounds to the right arm, clean non-infected and 50% healed.

[101] Learned Counsel argued that the Claimant in the instant case suffered from injuries similar to that of the Claimant in ***Morain Hurst*** *supra*. General damages awarded in that matter on October 11th, 2012 was in the sum of **Five Hundred Thousand Dollars ($500,000.00)** when the CPI was 72.5. This award, after indexation updates to **Nine and Eighty-Six Thousand Eight Hundred and Ninety-Six Dollars and Fifty-Five Cents ($986,896.55)** using the January 2025 rebased CPI of 143.1.

[102] In relation to Future Medical Expenses, Learned Counsel argued that the Medical Report of Dr. Geoffrey Williams is of significant importance as it indicates that the

Claimant could benefit from plastic surgery. The cost of this surgery would be in the amount of **Four Hundred and Fifty Thousand Dollars ($450,000.00)**.

SUBMISSIONS ON DAMAGES FOR THE DEFENDANT

[103] In submissions on damages on behalf of the Defendant, Mrs. Senior-Smith pointed out her continued reliance on the submissions previously made in respect of the preliminary point and asked that the Court decline to consider the report of Dr Williams as it had not been pleaded.

[104] Learned Counsel argued that in respect of the quantification of the award for general damages for pain and suffering and loss of amenities, the appropriate award for General Damages would be in the sum of **Six Hundred and Fifty Thousand Dollars ($650,000.00)**. Counsel placed reliance on the authority of ***Maria Protz-Marcocchio v. Ernest Smatt, Suit No. C.L.M. 1550 of 1995*** as being instructive in the assessment of an award for pain and suffering and loss of amenities.

[105] In the ***Maria Protz-Marcocchio v. Ernest Smatt*** *supra* case, the Claimant suffered from a severe lacerated wound on the upper part of the back of her right leg about 1 ½ '' long, puncture wounds on the outer side of the right leg and two puncture wounds on the front of right thigh. Her injuries were considered serious as the wounds took a considerably long time to heal. There was evidence of infection in the wound on the back of her right leg and severe discoloration on the back of her right leg and the right side of her leg.

[106] Her doctor had recommended that plastic surgery be considered as a treatment option. She also suffered from severe post-traumatic stress disorder and associated phobic response. She was assessed and it was found upon examination that the dog-biting incident had materially affected her mental and physical health. It was recommended that she seek continued therapy for at least six (6) months. For general damages, she was awarded **Two Hundred and Forty-Four Thousand Seven Hundred and Seventy Dollars ($244,770.00)** in April 2002, when the CPI of 23.5 was used. This figure now updates to **One Million**

Four Hundred and Ninety Thousand Four Hundred and Ninety-Three Dollars and Six Cents ($1,490,493.06) using the January 2025 rebased CPI of 143.1.

[107] Counsel submitted that the cases can be distinguished as the injuries for this Claimant are not as severe as the injuries of the Plaintiff/Appellant in the aforementioned case. She submitted that the Claimant, Ms. Lewars sustained injuries to her left thigh and left knee. She had a 4 cm sutured laceration over her left thigh and a 1.5 to 2 cm laceration over her left knee. She received treatment at the Saint Ann's Bay Hospital and was sent home. She got further treatment from Tretzel Medical Centre.

DISCUSSION/ANALYSIS

[108] The aim of an assessment of damages as enunciated by Lord Blackburn in ***Livingstone v Rawyards Coal Co.*** *[1880] Appeal CAS.25* is to arrive at a figure that will provide adequate compensation to the Claimant for the damage, loss or injury suffered. It is therefore trite law that the sum of money that should be awarded as General Damages ought to be a sum which as **"nearly as possible"** puts the Claimant in the same position he would have in if he had not sustained the wrong.

[109] In seeking to arrive at an appropriate award for pain and suffering and loss of amenities, the Court is cognizant of the remarks of Lord Hope of Craighead in ***Wells v Wells*** *[1998] 3 All ER 481* at 507: -

> "*The amount of award for pain and suffering and loss of amenities cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the court's best estimate of the claimant's general damages."*

[110] In my examination of the authorities cited by the respective parties, although the nature of the injuries sustained by the Claimants are the same, there are significant differences in relation to the severity of injuries suffered. In ***Protz-Marcocchio***, the Claimant was diagnosed with severe PTSD and the doctor opined that the incident had materially affected her mental and physical health to the point where she

required therapy for six (6) months. The doctor noted that her problems were as a result of the incident in which she was attacked by dogs. The injuries of the Claimant were considered grave as they took a long time to heal due to infection and critical discoloration. On a comparison with the injuries sustained by Ms Lewars, I find that while there was some similarity in the nature and severity of the bite injuries, the overall diagnosis of the Claimant in ***Protz-Marcocchio*** was far more severe and any award made would need to reflect this distinction.

[111] In my analysis of ***Morain Hurst***, I found that although the injuries suffered by Ms. Lewars were also comparable to those of the Claimant in that case, that Claimant suffered injuries to more areas of his body. Ms. Lewars' injuries were limited to both her lower thigh and upper leg. I noted however that the bite mark to the lower thigh was deep into the subcutaneous tissue and her recovery was adversely impacted by an infection of this wound which also brought additional pain and suffering. While she was able to move around, she was not able to walk normally even weeks after and she is still affected in the use of her leg.

[112] In conducting my assessment on quantum, I noted that while both decisions show some similarity to the case at bar, they are of some vintage in circumstances where the prevailing practice tends towards recent decisions which may better reflect the relevant rate of inflation and consumer price index. In the circumstances, I am of the view that an appropriate award would be in the sum of **Nine Hundred and Seventy-Five Thousand Dollars ($975,000.00)**.

<u>Future Medical Care</u>

[113] As part of her award for General Damages, the Claimant has sought an award for Future Medical Expenses to cover the cost of the Plastic Surgery. This award is opposed by the Defendant whose Attorney has urged the Court to decline to make an award as this was never pleaded as required. In considering this submission, the Court received useful guidance from the Court of Appeal decision of ***Trudy Silent Hyatt v Rohan Marley*** *supra* which has been relied on by both Parties. In that matter, McDonald Bishop JA (as she then was) stated as follows:

> *[61]* ***The learned trial judge would also have erred in her statement that the cost of future care was an item of special damages that must be specifically pleaded and proved (see Shearman v Folland [1950] 2 KB 43 at page 51 and Perestrello v United Paint Co Ltd [1969] 3 All ER 479).*** *It appears the learned trial judge made a distinction between future care and future medical expenses and that her reference to future care was related solely to domestic assistance. She stated as follows at para. [144]: "With respect to 'future care', no evidence has been led by the Claimant which establishes that an award ought to be made and, in any event, there has been no amendment to the particulars of claim and neither has any application been made for any amendment to be made. This is an item of special damages which must be both pleaded and proved. In applying the principle that a claim for domestic assistance must be both pleaded and proved, there will be no award under that head."*
>
> *[62] It is true that the appellant had failed to make out a claim for domestic assistance as an item of special damages.* ***However, since a claim was made for domestic assistance as a future expense and, also, for future medical expenses associated with the Rosomoff Centre, those latter aspects of the claim should have been treated separately as items of general, rather than special damages (emphasis added).***

[114] It is clear from this decision that the need for the surgical intervention having arisen from the unsightly scarring caused by the dog bite, this expense would properly fall for consideration under the heading of general damages. Although it was suggested to the Claimant that appropriate clothing could be worn to 'cover' the scarring, her response made it clear that even her 'church wear' was not able to mask it. The description by the doctor as unsightly also highlighted how visible and unattractive it is in appearance and made it clear that while the surgery would not remove all traces of the scars, it would still be remedial in nature. Accordingly, I am satisfied that an award should also be made for this expense in the sum of **Four Hundred and Fifty Thousand Dollars ($450,000.00)**.

ORDERS

[115] Accordingly, Judgment is entered in favour of the Claimant and Damages are assessed as follows:

1. Special Damages are awarded in the sum of **Fifty-One Thousand Six Hundred and Sixty-Two Dollars and Twenty-Four Cents ($51,662.24)** with interest at the rate of 3% from May 16th, 2016 to November 8th, 2024.

2. General Damages are awarded for pain and suffering and loss of amenities in the sum of **Nine Hundred and Seventy-Five Thousand Dollars ($975,000.00)** with interest at the rate of 3% from October 7th, 2016 to November 8th, 2024.

3. Future Medical Expenses awarded in the amount of **Four Hundred and Fifty Thousand Dollars ($450,000.00).**

4. Costs to the Claimant to be agreed or taxed.

5. Claimant's Attorney to prepare, file and serve the Judgment herein.