

- [2] Upon presentation, he was diagnosed with a head injury comprising a cerebral concussion; a stable occipital bone fracture extending to the lambdoid suture; and a small fracture of the anterior and posterior walls of the left sphenoid sinus.
- [3] He was later diagnosed with a mild head injury, a left brain contusion, and a stable skull fracture.
- [4] The claimant was seen by Dr Duane Patten, Consultant Neurologist, who prepared a medical report. His findings included mild short-term memory impairment and traumatic brain injury with neurocognitive deficits. Dr Patten concluded that there was a nexus between the neurocognitive deficit and the trauma and that the claimant would benefit from a neuropsychological evaluation.
- [5] In his expert report, Dr Patten assessed that Mr Messiah had recovered from a traumatic brain injury, with mild residual neurocognitive deficits. He recommended that the claimant undergo a neurocognitive assessment and treatment with a neuropsychologist. His prognosis was that dementia associated with degeneration is 1.5 times more likely after trauma, which did not exclude the possibility of non-traumatic causes of dementia as the cause of the current neurocognitive deficit. However, given the neurocognitive deficit's coincidence with a traumatic episode, it was likely that the current neurocognitive deficit in Mr Messiah was related to neurodegeneration.
- [6] From a purely traumatic brain injury perspective, the claimant's disability score, measured using the clinical dementia rating tool, was 14% whole-person impairment, as measured by the AMA Guides to Evaluation of Permanent Impairment, 5th Edition.
- [7] The claimant was also seen by Dr Kai Morgan, Clinical Psychologist, and Mr Verrol Billet, Associate Clinical Psychologist, both of whom were appointed as experts by the Court.

[8] Dr Kai Morgan prepared an expert psychological report dated 25 May 2023, in which her diagnostic impressions were that the claimant had sustained frontoparietal contusions as part of his injuries. She said:

“Mr. Messiah met the criteria for major neurocognitive disorder due to traumatic brain injury (mild) with behavioral disturbance according to the DSM – 5 – TR the severity is considered to be mild as it refers to as a person who has difficulties with instrumental activities of daily living Mr Messiah has had challenges, sleeping eating properly and with social interaction since the incident, but is able to cook and take care of his hygiene he complains of being in constant pain which prevents him from working. He complained of a lack of sleep, which made his situation worse, as sleep helps rejuvenate the mind and body, and this was not happening. It seemed to be contributing to his mood. Reports from both Mr and Mrs Messiah since the accident are that Mr Messiah is more short-tempered, sometimes disrespectful, and it can take a while to calm him down. He cannot work as he used to because of pain and breathing issues, and he is frustrated and socially withdrawn.”

[9] Dr Morgan ultimately assigned a 13% whole-person impairment and diagnosed the claimant as suffering from:

- i. Major neurocognitive disorder due to traumatic brain injury (mild) with behavioural disturbances.
- ii. Persistent depressive disorder with anxious distress – moderate - late onset (after 21), with major depressive episode.

[10] Both sides rely on the case of **Kristophe Witter (bnf Joan Samuels) v Sheldon James et al**,¹ in which two-year-old twins were injured in a motor vehicle collision. The claimant was one of the twins found on the floor of the car between the seats after a head-on collision with an overtaking police car.

[11] The parties rely on paragraphs [10], [11] and [13] of that decision, which said that the claimant sustained a significant concussion of at least moderate severity. Dr Randolph Cheeks, a Consultant Neurosurgeon, assessed the claimant using MSCHIF (Mental Status Cognitive and Highest Integrative Functions) and found that the injury interfered with his ability to assume normal roles or to perform his usual daily activities. The claimant was assigned a whole-person impairment of 16%.

[12] That claimant was assessed by a Clinical Psychologist who said:

“His longstanding history of developmental delays points to the presence of cognitive deficits before the motor vehicle accident. It must also be noted that Kristophe’s injuries during the accident may have resulted in exacerbation of some cognitive deficits and weaknesses, and that any such intensification of his challenges has implications for his ability to cope effectively with everyday demands.

...Therefore whole person impairment is calculated at approximately 8% and this represents partial disability”

[13] The learned judge reconciled the reports of both experts and, on January 29, 2016, awarded \$7,000,000.00 in general damages, using a CPI of 88.6.

¹ [2016] JMSC Civ 5

- [14] In **Kristophe Witter**, Miss Hall submitted that two other cases were a better guide on quantum. The first was **Garrell v Byron Williams**,² in which a three-year-old was involved in a motor vehicle accident and sustained multiple fractures, including a healed parietal bone fracture with a notable depression. She was referred for neurological examination. By the time of the Assessment hearing, she was 16 years old; all five medical evaluations, whether neurological or radiological, showed no signs of brain damage. The court largely relied on Dr Cheek's assessment, which concluded that the skull damage was mainly cosmetic and might have a psychological impact but did not constitute brain injury or intellectual deficiency. The claimant was awarded \$300,000.00 in general damages in 1995, which was updated using the CPI (231.8) for November 2015 to \$3,000,000.00.
- [15] The second case was **Dudley Burrell v United Protection Limited**,³ and in this case, an 8-year-old was hit by a van in August 1990. The child was examined by both Dr McHardy and Dr Cheeks, both Consultant Neurosurgeons, who concluded that his intellectual functions and memory were impaired by the accident. A clinical psychologist also underscored the need for remedial education. Notably, his injuries included unconsciousness for about two days, periorbital swelling and a skull fracture. He spent about a month in the hospital, and up to March 1991, he was still being treated for eye pain and headaches. The trial and assessment of damages hearing took place in 1996, and an award of \$1,865,280.00 was made for general damages. The award was updated to \$986,130.00 using the CPI for November 2015.⁴

² C.L.1988

³ Suit No. C.L.1992 B 072

⁴ Judgment of Bertram-Linton, J at paras [7] and [8]

Discussion

[16] In **Joblin v. Associated Diaries Limited**,⁵ Lord Keith of Kinkel had this to say:

"The assessment of damages for personal injuries involves a process of restitutio in integrum." The object is to place the injured plaintiff in as good a position as he would have been in but for the accident. He is not to be placed in a better position. The process involves a comparison between the plaintiff's circumstances as regards capacity to enjoy the amenities of life and to earn a living as they would have been if the accident had not occurred and his actual circumstances in those respects following the accident. In considering how matters might have been expected to turn out if there had been no accident, the "vicissitudes" principle says that it is right to take into account events such as illness, which not uncommonly occur in the ordinary course of human life. If such events are not taken into account, the damages may be greater than are required to compensate the plaintiff for the effects of the accident, and that result would be unfair to the defendant.

[17] The court accepts the evidence from the claimant's experts. The court accepts that the neuropsychological diagnoses of these experts came about as a result of the claimant's involvement in the collision. Conservatively, as the experts opine, the type of head injury sustained by the claimant is known to be linked, in some cases, to lingering cognitive issues, with impairment of recent memory being the most common sign.

[18] Dr Patten assigned a whole-person impairment of about 14%, indicating partial disability, whereas Dr Morgan assessed it at 13%. Notably, each expert specialises in a different field: Dr Patten is a Consultant Neurosurgeon, and Dr Morgan is a Clinical Psychologist. Consequently, their impairment ratings should be combined

⁵ [1982] A.C. 794, at page 814, paragraphs E-H

to estimate a total impairment of 27%. This conclusion takes into account the claimant's behavioural changes and the possible influence of dementia on his memory loss.

[19] In **Ricardo Wilkins v Powtronics**,⁶ the claimant had sustained a traumatic brain injury, among multiple injuries, in a series of accidents. Professor Morgan gave expert evidence and assigned the claimant's total permanent whole-person disability at 22%. That conclusion represented a combined disability arising from three different accidents. Of that 22%, Professor Morgan attributed 20% to post-traumatic epilepsy of the partial complex seizure type with psychoses, and 2% to post-traumatic headaches.

[20] I adopt the court's position in the Ricardo Wilkins case, which was that the impairment ratings of both experts should be combined to determine the global impairment figure. The learned judge, D. Fraser, J., awarded Ricardo Wilkins \$2,500,000.00 in general damages as a global figure on October 1, 2015.

[21] In the case of **Linnette Duncan-Walker v Clear Clarke & Anor**,⁷ following a collision, the claimant suffered a significant head injury, among other major injuries. After combining the impairment ratings of her orthopaedic surgeon and neurosurgeon, the court found that she had a 37% whole person disability and awarded \$3,087,416.00 in general damages, which amounts to \$18,058,639.68 using the CPI for April 2026 of 147.4.

[22] In all the circumstances of this case, being guided by the authorities, an appropriate award would be in the range between **Kristophe Witter** and **Linnette Duncan-Walker**, which is \$11,669,300.00 after an adjustment for inflation of both awards using the CPI for April 2026 of 147.4, and \$18,058,639. The claimant,

⁶ [2014] JMSC Civ 124

⁷ Suit No. C.L. 2002/D081 Delivered April 15, 2003

Linette Duncan-Walker, sustained serious injuries to her right arm in addition to the head injury. In the present case, Dr Patten concluded that the claimant made a full recovery from the traumatic brain injury. This merits a reduction in the award.

[23] General damages are awarded as the average of the two sums at \$14,863,969.50. The sum of \$352,000.00 is awarded as special damages.

[24] Orders

1. The claimant is awarded general damages in the sum of \$14,863,969.50, with interest at 3% per annum from December 2, 2020, to the date of judgment.
2. The claimant is awarded special damages in the sum of \$352,000.00 with interest at 3% per annum from January 29, 2020, to the date of judgment.
3. Costs awarded to the claimant to be taxed if not agreed.

Wint-Blair, J