Easter Term
[2017] UKPC 15
Privy Council Appeal No 0042 of 2016

JUDGMENT

Scott (Appellant) *v* The Attorney General and another (Respondents) (Bahamas)

From the Court of Appeal of the Commonwealth of the Bahamas

before

Lord Mance
Lord Kerr
Lord Sumption
Lord Reed
Lord Hughes

JUDGMENT GIVEN ON

16 May 2017

Heard on 20 February 2017

Appellant	*Respondents*
Roderick Dawson Malone	Peter Knox QC David Higgins (Assistant Director of Legal Affairs) Anastacia Hepburn (Bahamas Bar)
(Instructed by Sheridans)	(Instructed by Charles Russell Speechlys LLP)

LORD KERR:

Introduction

1. On 16 December 1998, the appellant, Shorn Scott, was assaulted by officers of the Royal Bahamian Police Force. He brought proceedings for compensation for the injuries that he suffered as a result of that assault. On 29 January 2010 Madam Justice Estelle Gray found that the assault was unprovoked and that the appellant had established liability. She made an order that damages be assessed. This appeal is concerned with the assessment made of the general damages of the appellant's claim.

2. The appellant suffered devastating injuries as a result of the assault. He has been rendered paraplegic because of a wedged compression fracture of his spine. He also sustained a number of minor injuries including a laceration of the forehead, abrasions to his elbows, an injury to his lower back and a generalised head injury with a number of consequences.

3. An assessment of damages was conducted by Mrs Eurika Charlton, assistant registrar. She gave her ruling on 24 September 2013. On the issue of general damages, she considered that there was a conflict between earlier decisions of the Court of Appeal on the approach to be taken to their assessment. In *Acari v Lane* Civil Appeal No 18 of 2000 (unreported) the Court of Appeal, referring to the earlier decisions of *Lubin v Major* Civil Appeal No 6 of 1990 (unreported) and *Matuszowicz v Parker* 1987 50 WIR 24, held that it was legitimate to refer to the Judicial Studies Board (JSB) guidelines for the assessment of general damages in personal injury cases in England and Wales but that the figures outlined there would have to be adjusted "to take account of the current purchasing power of the Bahamian dollar and to reflect the differential in the cost of living which currently is higher than in England …". In the later case of *Grant v Smith* Civil Appeal No 32 of 2002 (unreported) Osadebay, JA at p 14, made the following observation about *Acari*, *Matuszowicz* and *Resorts International (Bahamas) Ltd v Trevor Rolle* Civil Appeal No 44 of 1994 (unreported) (in all of which an uplift had been made to the general damages guideline figure in the JSB's recommendations to take account of the difference in the cost of living in the Bahamas):

> "It is noteworthy that in these cases … the Court recognised that at the time of the award the cost of living in the Bahamas was higher than in Great Britain and so adjustments were made upwards using the English awards as a base. Wherever may have been the true position as to the relative cost of living as between the Bahamas and the United Kingdom and whatever views may

> have been previously expressed, it is now generally accepted that the cost of living in London, England, is now higher than in the Bahamas."

4. Assistant Registrar Charlton considered that there were now "two conflicting decisions" and that this created a "dilemma" for her in deciding whether an uplift on the JSB guidelines should be applied. Counsel for the appellant had argued that an increase of 45% on the guidelines' figures was appropriate. The assistant registrar said that this claimed uplift had "very little, if any, authority to support it". She decided that in light of the conflict in the Court of Appeal decisions which she had identified, she would not make any uplift on the award of general damages. She therefore made an award of $257,000 for general damages, comprising $255,000 for the appellant's paraplegia, $1,000 for the laceration to the face and a like sum for scarring.

5. A claim had been made that the appellant's loss of bowel and bladder function called for separate assessment, independent of that relating to his paraplegic condition generally. It was also claimed that the appellant's loss of sexual sensation should be a distinct head of damages. Both these claims were rejected by the assistant registrar.

The appeal to the Court of Appeal

6. Five grounds of appeal were advanced on behalf of the appellant. So far as concerns the appeal before the Board, the material grounds are: that the assistant registrar should not have treated the appellant's loss of bladder and bowel function as "part and parcel" of the paraplegia; that the award was inordinately low; that the assistant registrar had failed to make an award for the appellant's head injury and the consequent headaches, dizziness and pain in the left ear; and that the assistant registrar had erred in equating loss of sexual sensation to injury of his reproductive system.

7. The Court of Appeal dealt with the first and final of these grounds together. Allen P, with whom John JA and Conteh JA agreed, referred to the medical evidence which established that loss of sensation (the result of the appellant's paraplegia) began at a point above the level of the bladder and the bowel. The issue on this aspect of the case was, therefore, she said, whether it could be inferred that the loss of bladder and bowel function was a symptom of the appellant's paraplegia or a distinct and separate injury. In the absence of medical evidence that the loss of function was due to a separate injury, the only possible conclusion, Allen J held, was that it was an incident of the appellant's paraplegia.

8. The appellant claimed that he had a complete loss of sexual sensation. Allen P rejected this, observing that it was "well-nigh impossible to penetrate the vagina and ejaculate sperm … with a penis which has no sensation and lacks turgidity". The

appellant has been able to father three children since suffering his injuries. Allen P therefore referred approvingly to the statement of the assistant registrar that the penis could only become erect if there is sensation in the organ to enable a message to be sent from the brain causing blood to flow into the penis.

9. As regards the second ground of appeal, Allen P noted that the assistant registrar had used the 10th edition of the JSB guidelines which had been published in 2010. The 11th edition, published in July 2012, should have been used, the President said. The latter had suggested a range of £156,750 to £203,000 for paraplegia as opposed to the range in the 10th edition of £144,000 to £186,500 in the 10th edition, an increase of about 8.5%. While the appellant was not in the worst category of paraplegia - he was not bedridden, he was not in constant pain and he did not suffer bedsores or urinary infection - Allen P considered that an increase from £150,000 (awarded by the assistant registrar) to £185,000 was warranted. This was converted to $314,500.

10. In relation to the third ground of appeal (that the assistant registrar had failed to make any award for the appellant's head injury and its consequences) the President said that the overall award had made no provision for this. She considered that an award of £5,000 (converting to $8,500) should be made for the head injury. Notably, however, she stated (in para 40 of her judgment) that there was no evidence before the registrar in relation to the appellant's claimed dizziness. No allowance was made for this, therefore, in the readjustment of the amount to be awarded to the appellant.

The appeal before the Board

11. The principal argument advanced on behalf of the appellant was that the Court of Appeal had failed to address the argument that an uplift should have been allowed on the figure suggested by the English JSB guidelines for general damages. In the written submissions for the Court of Appeal, reference had been made to the submission made to the assistant registrar that an adjustment was necessary to reflect the "relatively higher cost of living and the higher level of expectation in the Bahamas". In those submissions it was argued that an annual increase of 5% was appropriate so that, even applying the 2010 guidelines, the award for general damages should have been $470,819.25.

12. It was submitted that the failure of the Court of Appeal to apply an uplift went counter to an established line of authority. It was also claimed that the court ought to have addressed and resolved the conflict between the *Acari* and *Grant* cases. It was claimed that an uplift on the English guidelines should be applied as a matter of principle.

13. The respondents submitted that no principle could be derived from the Bahamian authorities to the effect that an uplift to suggested ranges of damages in the English JSB guidelines should be automatically applied. The Court of Appeal was perfectly entitled to refer to the English guidelines but to decline, in the absence of any evidence which would warrant it, to increase the award beyond the range of damages suggested by those guidelines.

14. The appellant also argued that the Court of Appeal's findings that there was no loss of sexual sensation and that the loss of bowel and bladder function were part and parcel of the paraplegia were unsustainable in light of the uncontroverted evidence given by the appellant and on his behalf.

15. Finally, it was submitted on behalf of the appellant that, in its assessment of the sum to be awarded in respect of the head injury which he sustained, the Court of Appeal fell into obvious error in suggesting that there had been no evidence that he suffered from dizziness or pain in his ear. Evidence had been given that both these complaints continued. That evidence had not been challenged or controverted.

A question of principle?

16. Is there a principle that guideline figures, suggested by the JSB for particular types of injury, should be routinely increased to reflect different levels of the cost of living between England and the Bahamas? The Board has concluded that there is no such principle. There are three reasons for this. The first, and most important one, is that a prescriptive approach to the assessment of damages whereby they are determined by the rigid application of a scale which is then increased at a preordained rate is incompatible with the proper evaluation of general damages. The second reason is that, on a proper understanding of the relevant case law, it is clear that no such principle has been pronounced by the Bahamian courts. Finally, it would be wrong to apply an unchanging uplift without evidence of an actual, as opposed to a presumed, difference in the cost of living between England and the Bahamas.

Assessment of damages for pain and suffering and loss of amenity

17. General damages must be compensatory. They must be fair in the sense of being fair for the claimant to receive and fair for the defendant to be required to pay - *Armsworth v South Eastern Railway Co (2)* (1847) 11 Jur at p 760. But an award of general damages should not aspire to be "perfect compensation" (however that might be conceived) - *Rowley v London and North Western Railway Co (3)* (1873) LR 8 Ex at p 231. It has been suggested that full, as opposed to perfect, compensation should be awarded - *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, 39 per Lord Blackburn:

> "where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong …"

18. As Dickson J, in the Supreme Court of Canada, observed in *Andrews v Grand & Toy Alberta Ltd* (1977) 83 DLR (3d) 452, 475-476, applying this principle in practice may not be easy:

> "The monetary evaluation of non-pecuniary losses is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution."

19. Accepting and following this approach, the Court of Appeal in England and Wales in *Heil v Rankin* [2000] EWCA Civ 84 at para 23 said:

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

20. In reaching that conclusion, the court drew on the statement of Lord Pearce in *H West & Son Ltd v Shephard* [1964] AC 326, 364 to the effect that the court had to "perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum".

21. The arbitrary nature of the exercise was also recognised in *Heeralall v Hack Bros* (1977) 25 WIR 119 where Haynes CJ said at 125 that "the judicial exercise of measuring in money such things as pain and suffering or the impairment of capacity to lead life to the full really involves dealing in incommensurables".

22. Given the essentially artificial, and therefore arbitrary, nature of the exercise involved in the assessment of general damages, there is a risk of markedly different levels of compensation resulting from individual assessments of what they should be. The need for some general guidance as to the appropriate amounts in similar cases is obvious. It was that need which prompted the statement in *Heil v Rankin* in para 25 to the following effect:

> "The assessment of general damages requires the judge to make a value judgment. That value judgment has been increasingly constrained by the desire to achieve consistency between the decisions of different judges. Consistency is important, because it assists in achieving justice between one claimant and another and one defendant and another. It also assists to achieve justice by facilitating settlements. The courts have become increasingly aware that this is in the interests of the litigants and society as a whole, particularly in the personal injury field. Delay in resolving claims can be a source of great injustice as well as the cause of expense to the parties and the justice system. It is for this reason that the introduction of the guidelines by the Judicial Studies Board ('JSB') in 1992 was such a welcome development."

23. What is a reasonable sum must reflect local conditions and expectations. In para 38 of *Heil v Rankin* the Court of Appeal said, "… The decision [on the amount of general damages] has to be taken against the background of the society in which the Court makes the award. The position is well illustrated by the decisions of the courts of Hong Kong. As the prosperity of Hong Kong expanded, the courts by stages increased their tariff for damages so that it approached the level in England. [See *Chan Pui-ki v Leung On* [1996] 2 HKLR 401 (at pp 406-408)]".

24. The *Chan Pui-Ki* decision followed that given in the earlier Hong Kong case of *Lau Che Ping v Hoi Kong Ironwares Godown Co Ltd* [1988] 2HKLR 650 where the Court of Appeal responded positively to the argument that awards fixed in a 1980 decision in *Lee Ting Lam* should be reviewed and increased. In giving the judgment of the court in *Lau Che Ping*, Cons ACJ said at 654F:

> "Apart from … automatic adjustment for inflation, a general adjustment of the guidelines may be necessary on account of change in social and economic conditions … Changes inevitably take place in the everyday life of any growing society and the expectations of the average person and family tend to increase as each year goes by. Hong Kong is no exception, and those changes must be reflected in the general standards of awards, otherwise the awards will cease to be regarded as fair and reasonable compensation."

25. The Bahamas must likewise be responsive to the enhanced expectations of its citizens as economic conditions, cultural values and societal standards in that country change. Guidelines from England may form part of the backdrop to the examination of how those changes can be accommodated but they cannot, of themselves, provide the complete answer. What those guidelines can provide, of course, is an insight into the

relationship between, and the comparative levels of compensation appropriate to different types of injury. Subject to that local courts remain best placed to judge how changes in society can be properly catered for. Guidelines from different jurisdictions can provide insight but they cannot substitute for the Bahamian courts' own estimation of what levels of compensation are appropriate for their own jurisdiction. It need hardly be said, therefore, that a slavish adherence to the JSB guidelines, without regard to the requirements of Bahamian society, is not appropriate. But this does not mean that coincidence between awards made in England and Wales and those made in the Bahamas must necessarily be condemned. If the JSB guidelines are found to be consonant with the reasonable requirements and expectations of Bahamians, so be it. In such circumstances, there would be no question of the English JSB guidelines imposing an alien standard on awards in the Bahamas. On the contrary, an award of damages on that basis which happened to be in line with English guidelines would do no more than reflect the alignment of the aspirations and demands of both countries at the time that awards were made for specific types of injury.

26. Cost of living indices are not a reliable means of comparing the two jurisdictions even if one is attempting to achieve approximate parity of value in both. Cost of living varies geographically and may well do so between various sectors of the population. The incidence of tax, social benefits and health provision (among others) would be relevant to such a comparison.

27. It is perhaps unfortunate that the Court of Appeal did not address the argument that the proper way to determine compensation for general damages was to fix the basic rate by reference to the JSB guidelines and apply a notional uplift. The lack of reference to that argument in the judgment should not be taken as an indication that it was not considered, however. It must be assumed that the Court of Appeal decided that this was not how general damages should be assessed, since, although the English JSB guidelines were followed, no uplift was applied.

28. It is likewise not to be assumed that the Court of Appeal decided that it need only apply the JSB guidelines to arrive at the appropriate amount, without regard to local economic conditions and the expectations of citizens of the Bahamas. As has been observed at para 25 above, if JSB guidelines happen to coincide with what is regarded as appropriate for the Bahamas, there is no reason that they should not be adopted. And the Board should be properly reticent about interfering with the Court of Appeal's assessment unless satisfied that a wrong principle of law was applied or that the award was so inordinately small or exceedingly great that it was plainly wrong. As the Board said in *Nance v British Columbia Electric Railway Co Ltd* [1951] AC 601, 613:

> "… before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant

> factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (*Flint v Lovell* [1935 1 KB 354]), approved by the House of Lords in *Davies v Powell Duffryn Associated Collieries, Ltd* [1942 AC 601]."

29. The Board is not in a position to say that the choice of the Court of Appeal to order that general damages should be in line with the JSB guidelines involved the application of a wrong principle of law or resulted in an inordinately low award. As has been said (at para 25 above), this is primarily a matter for Bahamian courts, familiar with local conditions and the hopes and aspirations of the society which they serve.

The relevant case law

30. In *Matuszowicz v Parker* (1987) 50 WIR 24, 25, Georges CJ said:

> "Until a pattern of local decisions emerges it appears to me sensible to look to the English decisions. They should not be treated as inflexible guides. There is no income tax in the Bahamas. The cost of living is somewhat higher than in Great Britain. It would also be true to say that expectations in relation to awards are higher because of awareness of the very high awards common in the USA, awards which incidentally have built into them the costs of counsel paid on a contingency basis. English awards could therefore be treated as a guide, but increased as seems appropriate, having regard to local conditions."

31. It is important to note that Georges CJ was careful to stipulate that English decisions should not be treated as inflexible guides. Indeed, in an earlier passage in his judgment he had expressed the view that the most useful precedents could be drawn from Bermuda and the Caymans which had similar legal systems and whose economic and social conditions were most like those in the Bahamas. But cases from those jurisdictions were "not likely to be many and, in the absence of law reports, access to decided cases [would] not be easy." Recourse to English decisions was a matter, therefore, of tapping the best, rather than the ideal, source. And it is clear that the Chief Justice did not propound a principle that English awards, with an appropriate uplift, were in any sense the infallible guide to the appropriate levels of award in the Bahamas.

32. In *Lubin v Major* Appeal No 6 of 1990 (unreported) the Court of Appeal took a similar approach. It suggested that English decisions could be treated "as a guide, though not as an inflexible guide, to the level of awards in personal injury assessments

adjusted upwards as appropriate having regard to the relatively higher cost of living in the Bahamas." Again, it is clear that the court did not suggest that this approach was the one to be invariably followed. Resort to the decisions in England was not inflexibly required and the upward adjustment should be made "as appropriate". No general principle was enunciated.

33. *Acari v Lane* was the third of the cases on which the appellant relied to advance the argument that there had been an established practice in the Bahamas of fixing the level of general damages by following the JSB guidelines and applying an uplift to reflect a cost of living that was higher there than that experienced in England. In that case the Court of Appeal (Zacca P, Churaman and Ganpatsingh JJA) increased an award of $60,000 for pain suffering and loss of amenity associated mainly with back injuries to $100,000. At pp 10/11 of his judgment, Ganpatsingh JA said at pp 10-11:

> "In the Bahamas we have, as yet, not established categories and a tariff of assessments in the nature of conventional sums for these kinds of cases. This may well be as a result of the relatively limited number of claims in which harm of varying degrees of seriousness have occurred … One is therefore compelled to look elsewhere for guidance. The Judicial Studies Board Guidelines for the Assessment of General Damages in Personal Injury Cases, categorises back injuries as being severe to moderate … the damages range from £14,000 at the moderate end to £35,000 at the higher end of the scale. These figures are of course only guidelines and would have to be adjusted to take account of the current purchasing power of the Bahamian dollar and to reflect the differential in the cost of living which currently is higher here than in England; See *Lubin v Major* Civil Appeal 6 of 1990 and *Matuszowicz v Parker* 1987 50 WIR 24."

34. Although the Court of Appeal considered that the JSB guidelines were an obvious source of comparative awards, there is nothing in the judgment that suggests that general damages should not be geared primarily to meet the needs of the citizens of the Bahamas. On the contrary, it was precisely because English guideline figures were deemed akin to those that were appropriate for the Bahamas that the JSB guidelines were chosen as a source of reliable comparison. A claim made by the appellant in *Acari* that comparison should be made with awards in USA was dismissed because that country was "dissimilar socially, economically and industrially" to the Bahamas.

35. The use of JSB guidelines as a means of determining awards in the Bahamas has no intrinsic authority. Its value lies in assisting to produce awards which are considered

to suit the requirements of Bahamians. If or when the guidelines are deemed incapable of bringing about that result, their use will no longer be justified.

36. The use of JSB guidelines with an uplift to cater for the difference in cost of living between the Bahamas and England was again canvassed in the case of *Grant v Smith* (referred to above at para 4). The Court of Appeal (Churaman, Ibrahim and Osadebay JJA), while accepting that the JSB guidelines could be used, rejected the argument that an uplift should be applied. The observation of Osadebay JA that the cost of living in London was now higher than in the Bahamas was criticised by the appellant in this case on the basis that the cost of living in London was much higher than in other parts of the UK and the JSB guidelines were designed to apply to England and Wales generally.

37. This observation does not appear to have been based on evidence. It was stated that "it is now generally accepted" that this was the position. In those cases where an uplift was applied, however, it does not appear that evidence was adduced to support the claimed difference in the cost of living between England and the Bahamas. For reasons earlier set out, the Board considers that assumptions as to any difference in the cost of living in the two countries cannot be a sound basis on which to calculate the appropriate award of general damages. Be that as it may, it is quite clear that the Court of Appeal did not accept that there was a principle or binding practice that an uplift should be applied.

38. In none of the cases to which the Board has been referred, therefore, has any principle or practice requiring an increase to be applied to JSB guidelines been recognised. The differences in the cases of, on the one hand, *Acari* and *Matuszowicz*, and, on the other, *Grant*, do not represent "conflicting decisions" on a matter of principle but rather a preparedness on the part of the courts in the earlier cases to accept that there was a difference in the cost of living between the Bahamas and England and in the case of *Grant* a refusal to accept that this was so.

The basis on which an uplift might be applied

39. In none of the cases in which the question of whether an increase to the figures given in the JSB guidelines should be applied was evidence adduced as to what the mooted difference in the cost of living between the two countries actually was or on what basis it had been calculated. In the course of the hearing before the Board it was suggested that this was a matter of which judicial notice could be taken. The Board cannot accept that proposition.

40. Judicial notice is the acceptance by the courts of facts or a state of affairs which are so notorious, or so clearly established, that evidence of their existence is deemed unnecessary. As *Cross and Tapper on Evidence* 12th ed (2010), p 76 state:

> "Judicial notice refers to facts which a judge can be called upon to receive and to act upon either from his general knowledge of them, or from inquiries to be made by himself for his own information from sources to which it is proper for him to refer."

41. Moreover, the party seeking judicial notice of a fact "has the burden of convincing the judge (a) that the matter is so notorious as not to be the subject of dispute among reasonable men, or (b) the matter is capable of immediate accurate demonstration by resort to readily accessible sources of indisputable accuracy" - *Morgan, Some Problems of Proof under the Anglo-American System of Litigation* 36.

42. It is plainly impossible to take judicial notice of the difference in cost of living between the Bahamas and England. Where that difference was accepted in cases such as *Acari* and *Matuszowicz*, it must have been on the basis of agreement or assumption. Absent agreement, however, this is not something which can be assumed. For the reasons given earlier, the Board considers that a mechanistic adherence to JSB guidelines with an automatic increase cannot be the proper way in which to assess general damages in the Bahamas. If such an approach was appropriate, it could only be contemplated on the basis of evidence to establish the fact that there was a difference in the cost of living between the two countries, rather than an assumption that this was so. It should be made clear, however, that the Board does not commend such an approach. As already observed, JSB guidelines can provide an insight into the proper awards of compensation for pain and suffering and loss of amenity in the Bahamas but only in so far as they meet the standards and expectations of Bahamians. An automatous method of assessing general damages by seeking out the norm in England and adding an automatic increase cannot fulfil those requirements.

Particular aspects of the appellant's continuing problems

43. The appellant complained that the Court of Appeal had wrongly dismissed or downgraded three aspects of difficulties that he continued to experience as a result of the injuries that he had sustained. The first of these related to his claimed loss of bladder and bowel function which, he claimed, required separate assessment from his general paraplegic condition. Secondly, he claimed to have suffered total loss of sensation in the genital area which affected his sexual enjoyment. Finally, he argued that the assistant registrar and the Court of Appeal had failed to fully reflect the continuing effects of the head injury which he had sustained.

44. The assistant registrar rejected the argument that loss of bladder and bowel function should be treated as a separate head of damage. She said that she did not consider that the medical evidence established "any injury to internal organs per se". She considered that the loss of bladder and bowel functions was a feature of the appellant's paraplegia. This was a conclusion which the assistant registrar was clearly entitled to reach. There was no medical evidence to suggest that the loss of bladder and bowel function had a separate aetiology from that of the injury which caused the paraplegia.

45. Before the Court of Appeal, counsel for the appellant presented an ambitious argument that, because one can lose one's bladder and bowel function without losing control of one's legs, or lose control of one's legs without losing control of bowel and bladder function, the loss of control of these functions had to be treated separately. This argument neglects to address the undisputed scientific and medical fact that paraplegia can cause loss of function to *both* the lower limbs and the internal organs below the line where damage to the spinal cord occurs. The assistant registrar and the Court of Appeal were entirely right to reject the argument.

46. They were likewise right in rejecting the argument about impairment of sexual function. The appellant's claim that he had no sensation whatever in his genitals was not only not supported by medical evidence, it was plainly unsustainable for the reasons that both courts gave. The appellant had fathered three children after the incident in which he had suffered injury. As the Court of Appeal observed in para 21 of its judgment, this was wholly inconsistent with a complete loss of sensation in the genital area.

47. Although the Court of Appeal increased the amount of compensation ordered by the assistant registrar because of her failure to make a separate award for the sequelae of the appellant's head injury, at para 40 of her judgment Allen P said that there was no evidence that he had suffered dizziness or pain in his ear as a result of having been struck on the head by a baton. In fact, the appellant had given evidence that he continued to suffer from transient vertigo when he sat up in the morning or when he rose during the night. He also claimed that he suffered pain in his left ear on a continuous basis. He was not challenged on either claim. And on the hearing before the Board, the respondent did not contend that the appellant was not entitled to be compensated for these continuing consequences of his injuries.

48. The Board has concluded, therefore, that the compensation which the appellant is entitled to receive ought to be increased to take account of these aspects of his injury. Having regard to the JSB guidelines, the Board considers that the appropriate amount to compensate for these continuing symptoms is £1,500 which converts at current rates to B$1,940 in round figures.

Conclusion

49. The Board will humbly advise Her Majesty that the appellant's appeal should be allowed to the extent of increasing the amount of compensation to be recovered by him by B$1,940 but that it should otherwise be dismissed. The parties are invited to make written submissions on costs within 21 days of the delivery of this judgment.