



[2014] JMSC Civ.83

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2011HCV05347

BETWEEN	YANIQUE HUNTER	CLAIMANT
AND	CONROD GEORGE CLARKE	1ST DEFENDANT
AND	KIRK BECKFORD	2ND DEFENDANT

Ms. Kimberly Facey instructed by Bignall Law for the Claimant

Ms. Dorothy Lightbourne, Q.C instructed by Lightbourne & Hamilton for the Defendants

Assessment of Damages – Personal Injury

Heard: April 25, 2014 and May 20, 2014

LINDO J. (Acting)

[1] This matter concerns an assessment of damages against the defendants arising out of the claim for damages as a result of an incident which took place on the 10th day of October, 2009 along North Odeon Avenue in the parish of St. Andrew. The Claimant claims that she was in a standing position whilst conducting transport inspections along the roadway when the 2nd defendant, as servant or agent of the 1st defendant so negligently drove, managed or controlled motor vehicle numbered and lettered PD 7882 that while reversing along the roadway the motor vehicle hit her from behind causing her to suffer injury, loss, damage and incur expenses.

[2] On November 1, 2011 the defendants acknowledged service and admitted liability and on November 11, 2011 they filed a defence as to quantum. On June 8, 2012 the claimant obtained judgment on admission against the defendants.

[3] At the hearing on April 25, 2014, the claimant was sworn and her witness statement dated March 24, 2014 was allowed to stand as her evidence in chief. Her evidence is that she was hit from behind while standing in the lay-by, that she started to feel pain in her lower back, was taken to Medical Associates Hospital where she was treated, did an x-ray and was released with prescription, three days sick leave and a referral to do physiotherapy. She also indicated that she continued having pain and discomfort so she had further medical evaluation at Alkatec Medical with Dr. Wayne Palmer, a consultant orthopaedic surgeon.

[4] The claimant also stated that she was sent to do physiotherapy which was done at Medical Associates Hospital and was paid for by her employers.

[5] The medical report of Dr. Gamez-Chang dated August 10, 2010 states that the claimant was seen on October 10, 2009 and was assessed as a soft tissue injury/spasm to her middle back and was again seen on October 15, 2009 when she was diagnosed as suffering from musculoskeletal spasm to the lumbar spine. On both occasions she was treated with analgesics and muscle relaxants. The claimant was later seen by Dr. Palmer on March 4, 2011 and his report dated April 6, 2011 indicates a diagnosis of chronic sprain or strain to the lower back with non-specific lower back pain, soft tissue injury/spasm to the middle back. She was assessed with 2% whole person impairment.

[6] The claimant was not cross examined by Queen's Counsel.

[7] Counsel for the claimant cited the following cases as comparable and instructive:

1. **Patricia Stewart v Caribbean Products Co. Ltd 1991CLS151**... where the dominant injuries of the claimant were that of chronic lumbar strain, contusion of lower 1/3 right leg, pain in left flank. In April, 1992 an award of \$115,000.00 was made which updates to \$1,568,980.89 using the CPI for March 2014 which is 214.2.

2. **Barbara Brady v Barlig Investment Co. Ltd. & Vincent Loshusan & Sons Ltd.,1996CLB 081**...In this case the claimant suffered severe lower back pains, marked tenderness along the lumbo-sacral spine as well as both sacro iliac joints and loss of consciousness. She was assessed as having 5% whole person PPD and was awarded \$300,000.00 in November 1998 which updates to \$1,316,263.83 as at March 2014.

3. **Anna Gayle Anderson v Andrew O'Meally 2005HCV02551**... which was heard on April 9, 2008. In this case, the court made an award of \$600,000.00 for general damages for pain and suffering and loss of amenities where the claimant sustained a soft tissue injury to the back and had significant pain at the time of examination. This sum updates to approximately \$1,029,807.69 using the CPI for March 2014 of 214.2.

Counsel for the claimant submitted that the instant claimant suffered injuries similar to that of Patricia Stewart, both claimants having dominant injuries mainly to the back and that both suffered impairment. She expressed the view that the claimant's injuries were more serious than Anna Gayle Anderson as unlike Anderson, she was assessed with a 2%PPD of the whole person. As such she suggested that any award made ought to be placed higher than that made in the case of Anna Gayle Anderson. She noted that the instant claimant endured pain and suffering for approximately two years while Anna Gayle Anderson suffered for less than a year.

[9] Queen's Counsel, in addition to the case of Barbara Brady which was referred to by Counsel for the claimant, submitted that the following cases are useful in assessing general damages:

1. **Iris Smith v Arnett McPherson & Donald Oldfield, Claim No. 1999CLS 130** in which the claimant suffered blunt trauma to the lower back and right side of neck, obvious soft tissue swelling around left knee, low back pain, lumbar sacral strain, multiple soft tissue injuries and spasm of neck and lower

back and was assessed at 5% PPD of the whole person and in June 2000 the court awarded \$350,000.00 for general damages which when updated equates to \$1,375,597.33.

2. **Cordella Watson v Keith James & Errol Ragbeen** reported in Khan 5 at p. 256 where the claimant suffered severe lower back pain, blunting of the sensation along the left thigh and leg and mild tenderness on palpation of her midline of the lumbar spine and had a PPD of 3% of the whole person. In November 1997, general damages of \$200,000.00 were awarded. When updated this equates to \$935,779.82

[10] Ms. Lightbourne, Q.C., submitted that the present case can be distinguished from the case of Iris Smith as the claimant in the case at bar suffered significantly less serious injuries and was assessed with a 2% PPD when compared with Smith who was assessed with 5%. She suggested that any award to the instant claimant must be discounted by at least 40% to reflect these distinctions and suggested that the updated award when adjusted would amount to \$825,357.80.

[11] In relation to the case of Cordella Watson, she noted that it was similar as regards the nature of the injuries both claimants suffered although the PPD in Watson was assessed at a marginally higher percentage. She also suggested that any award to the instant claimant be discounted by 20% to reflect the distinction between the two cases, therefore, when the updated award is adjusted the figure amounts to \$748,623.85.

[12] Queen's Counsel was of the view that the present case can be distinguished from the case of Brady given the nature and gravity of the injuries sustained by Brady. She noted that in Brady, the Claimant was assessed as having a higher percentage whole person disability than the instant claimant so any award should be discounted by 40% to take into account these distinctions.

[13] She submitted that the award for general damages should be related solely to pain and suffering and loss of amenities as there is no medical evidence regarding loss of earning capacity and/or termination and suggested that an award within the range of \$750,000.00 to \$850,000.00 is appropriate and reasonable for general damages.

[14] For special damages, the sum of \$145,000.00 has been pleaded. However, the claimant has only been able to strictly prove the sum of \$34,000.00. The exhibits tendered provide evidence of the number of visits to the doctor and the receipt of medical reports. I decline from making an award for the police report for the reason that I do not believe it is appropriate to make a claim for same under special damages. Although the claimant has not provided any proof of payment for transportation, I accept that transport operators do not normally give receipts, so I am prepared to make an award of \$10,000.00 for transportation expenses.

[15] In assessing the general damages, I am guided by the cases cited and have considered the nature and extent of the injuries sustained by the claimant as well as the nature and gravity of the resulting disability, the loss of amenities and the extent to which as a consequence of the accident, she has been affected. I also consider that the percentage permanent partial disability of the whole person is a guide for making comparisons and in arriving at a reasonable award.

[16] I find that the cases of Patricia Stewart, Cordella Watson and Barbara Brady are useful in coming to a determination as to a reasonable award to be made in the instant case. Using the percentage PPD as a factor, the award to the claimant in this case would be adjusted downward. Additionally, I note that the claimant in the case at bar did not endure the degree of pain and suffering as that suffered in the cases of Stewart, Watson or Brady.

[17] In view of all the circumstances I believe a reasonable assessment would be \$1,200,000.00 to adequately compensate the claimant and I will so award.

[18] Damages against the defendant are therefore assessed as follows:

General damages for pain and suffering and loss of amenities in the sum of \$1,200,000.00 with interest at 3% from October 7, 2011 to today.

Special damages awarded in the sum of \$44,000.00 with interest at 3% from October 10, 2009 to today.

Costs to the claimant to be agreed or taxed