



[2014] JMSC Civ. 32

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CIVIL DIVISION
CLAIM NO. 2009HCV034860**

BETWEEN	JERMAINE JEROME NEWMAN	CLAIMANT
AND	MARVA ANDREA CHAMBERS	1ST DEFENDANT
AND	DONOVAN CHAMBERS	2ND DEFENDANT

**Mrs. Allia Leith Palmer instructed by Messrs. Kinghorn & Kinghorn for the
Claimant**

Defendants absent and unrepresented

Assessment of Damages – Personal injury

Heard: February 28, 2014, March 6 and 13, 2014

LINDO J. (Ag)

[1] This claim is brought by Ms. Ironny Thomas, the mother and next friend of Jermaine Newman. It arose out of an accident which took place on or about June 24, 2008 when Jermaine was a minor. She claims that while a passenger in motor vehicle PP5782 owned by the defendants, the servant or agent of the defendants so negligently drove and/or operated the said motor vehicle that the said motor vehicle violently lost control and collided in a rock causing Jermaine to sustain serious personal injury and suffer loss and damage.

[2] The defendants did not file an acknowledgement of service or a defence and on July 2, 2010 the claimant sought and obtained judgment in default of acknowledgement of service and defence with damages to be assessed.

[3] On February 28, 2014 when the matter came on for assessment of damages, the defendants were absent and unrepresented.

[4] Jermaine Newman, having come of age, was sworn and his witness statement filed on January 21, 2014 was admitted as his evidence- in-chief after it was duly identified by him.

[5] In amplification of his statement, he gave evidence of his visit to a doctor in Old Harbour and to the Spanish Town Hospital where he was treated, received an injection and plaster of paris cast being put on his hand. The medical report of Dr. Vijayendra dated January 7, 2009 was tendered in evidence.

[6] Dr. Vijayendra's report indicates: "swelling and tenderness to right wrist" "undisplaced fracture distal radius of right wrist" and that the fracture healed with good range of motion.

[7] In assessing the general damages, I am guided by the unreported cases of CL1992R116 **Leroy Robinson v James Bonfield and Anor.** and CL1990W083 **Hubert Watson v Guy Fraser** referred to by counsel for the claimant.

[8] In Robinson, the claimant, a labourer, suffered multiple abrasions to left hand, tender swelling to left elbow, abrasions to right eyebrows and fracture to right wrist and was treated with injection and plaster cast to the affected limb. After 6 weeks the fracture had healed satisfactorily. The total period of incapacitation was 8 weeks and on September 23, 1996 (CPI 41.17), Harrison J. (as he then was) made an award of \$269,438.00 for pain and suffering and loss of amenities. This when updated using the CPI of 211.11 as at January 2014 amounts to **\$1,381,614.19**

[9] The court in Watson awarded \$300,000.00 for general damages for fractures with displacement of carpal bones of left wrist requiring bone grafting, multiple lacerations and bruises and blow to head. This claimant was a 76 year old tractor driver who was injured when the tractor overturned.

[10] In the case of Robinson, the injuries to the claimant are somewhat similar to that suffered by the claimant in the instant case but in the case at bar, Mr. Newman states that the cast remained on his hand for about 2-3 months and when it was removed his wrist continued to pain him and the pain and limitation continued for about a year before he was fully healed. However, the doctor's report indicates that as at January 7, 2009 the fracture had healed and the patient discharged.

[11] The case of Watson can therefore be distinguished as in addition to the fracture, Watson suffered a blow to the head and multiple lacerations and bruises. The injuries in the cases cited by counsel for the claimant are far more serious than the injury suffered by the claimant in this case.

[12] In the instant case, the claimant was fully recovered in two to three months. His injuries were not as severe as those in the cases cited. I will use the Robinson case as a guide and discount the award. I believe a sum of \$1,200,000.00 for general damages is reasonable in the circumstances.

[13] For special damages the claimant has not supported the claim by any receipts as he states that he cannot recall getting a receipt for the medical report. The sum of \$2000.00 has been strictly pleaded but has not been proved. I will therefore make no award under this head.

[14] The claimant is also entitled to costs as it relates to bringing these proceedings.

[15] Damages against the defendants is therefore assessed as follows: General damages in the sum of \$1,200,000.00 with interest at 3% from the date of service of the claim form

Costs to the claimant to be agreed or taxed.