



[2015] JMSC Civ. 96

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2013 HCV 00732

<b>BETWEEN</b>	<b>KAVIN PRYCE</b>	<b>CLAIMANT</b>
<b>A N D</b>	<b>RAPHAEL BINNS</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>MICHAEL JACKSON</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**Mr. P. Edwards instructed by Bignall Law for the Claimant**

**Defendants absent and unrepresented**

**ASSESSMENT OF DAMAGES – PERSONAL INJURY**

**HEARD: MAY 15, 2015 and May 22, 2015**

**GRAHAM-ALLEN, J (AG.)**

[1] This is an assessment of damages against the defendants. On July 7, 2014 judgment in default of acknowledgement of service was entered against the defendants.

The court assesses damages against the defendants as follows:

Special Damages	-	\$70,300.00 with interest at 6% from June 8, 2012 to May 22, 2015
General Damages Pain and Suffering and Loss of Amenities	-	\$1,500,000.00 with interest at 6% from February 11, 2013 to May 22, 2015

Costs to the claimant to be agreed or taxed.

## **Background**

[2] The claimant Kavin Pryce claims damages for injuries and consequential expenditure and loss sustained by the negligence of the 2<sup>nd</sup> defendant, the servant or agent of the 1<sup>st</sup> defendant.

[3] On June 8, 2014 the claimant was a passenger seated in the front seat of a Toyota Corolla motor car numbered and lettered 1197 FV. The vehicle was travelling from Linstead to Ewarton in the parish of St. Catherine.

[4] A Toyota Hiace motor truck lettered and numbered PC 3636 owned by the 1<sup>st</sup> defendant and driven by the 2<sup>nd</sup> defendant collided in the rear of the Toyota Corolla motor car in which the claimant was a passenger, pushing it into the rear of another motor vehicle which was parked on the side of the roadway.

## **Evidence of the Claimant**

[5] At the hearing the claimant was sworn and his witness statement dated April 16, 2015 was allowed to stand as his evidence-in-chief. Three (3) reports along with receipts for expenses incurred in the treatment of his injuries were admitted in evidence.

**Exhibit 1** – Medical report of Dr. Ravi Prakash Sangappa dated September 24, 2012.

**Exhibit 2** – Diagnostic Imaging Report from the Nuttall Hospital X-ray and Ultrasound Department dated June 13, 2012.

**Exhibit 3** – Physiotherapy Report from the Oasis Health Care dated October 1, 2012.

[6] The claimant was seen by Dr. Sangappa on June 9, 2012 at the Oasis Health Care. His assessment of the injuries revealed the following:

1. Cervical Strain
2. Lower Back Strain
3. Soft Tissue Injuries to Left Thigh
4. Left Knee Sprain

[7] Two (2) referrals were made by Dr. Sangappa – One (1) to the Nuttall Hospital X-ray and Ultra sound Department, the other for physiotherapy (as part of the treatment given) at the Oasis Health Care.

[8] On June 12, 2012 X-ray examination of the claimant's cervical, and lumbar spine and left knee was done. Dr. Sangappa referenced the result of the X-ray examination in his report.

[9] The claimant was reviewed by Dr. Sangappa on July 3, 2012. His opinion and prognosis were as follows:

1. He has shown fair recovery from his injuries.
2. He is expected to experience occasional episodes of neck and lower back pain for the next three month's time.
3. He would benefit from continuing physiotherapy exercises.

[10] The claimant received five (5) intensive physiotherapy sessions commencing June 14, 2012. He was discharged July 5, 2012.

### **Analysis**

[11] The cases of **Talisha Bryan v Anthony Simpson and Andre Fletcher** [2014] JMSC Civ. 31 unreported, delivered March 2014 and **Dalton Barrett v Poncianna Brown and Leroy Bartley** 2003 HCV 1358 Khan Vol. 6, pg. 104 submitted to the court for consideration by counsel for the claimant provide reasonable guides as to the award to be made to the claimant in this matter.

[12] In **Talisha Bryan's case** the claimant sustained whiplash injury to the neck and lower back strain. In March 2014 an award of \$1,400,000.00 was made which updates to \$1,452,842.50 using the Consumer Price Index (CPI) for March 2015 (Consumer Price Index 222.7).

[13] In the case of **Dalton Barrett**, the claimant suffered from mechanical lower back pains and mild cervical strain. In November 2006 an award of \$750,000.00 was made which updates to \$1,676,957.83 using the Consumer Price Index (CPI) for March 2015 (222.7).

[14] The injuries suffered by the claimant in this case seem to be more comparable to **Dalton Barrett**, although in addition to cervical strain and lower back strain, he also suffered soft tissue injury to left thigh and left knee sprain.

[15] In arriving at the award, the court took into account the opinion and prognosis of Dr. Sangappa on July 3, 2012 that the claimant was on the path of recovery from his injuries.

[16] It was submitted that an award of \$1,600,000.00 is a fair compensation for these injuries that the claimant sustained. The court does not share this view. The court believes that an award of \$1,500,000.00 is more reasonable.

[17] In relation to special damages the sum of \$125,500.00 was pleaded which includes the sum of \$20,000.00 for transportation. However, the sum of \$65,500.00 was strictly proven.

[18] No documentary proof of payment for transportation was provided. The claimant in his evidence speaks to the cost of transportation in paras. 9 and 10 of his witness statement dated April 16, 2015.

At para. 9 he states:

*“I travelled by charter taxi to Nuttall Memorial Hospital Limited for X-ray. I paid \$2,000.00 for this visit.”*

At para. 10 he states:

*“In terms of transportation I travelled by public transportation to Oasis Health Care for the visits. I made seven (7) visits to Oasis Health Care where I incurred cost of \$400.00 per visit making a total cost of \$2,800.00.”*

[19] The court accepts that these are reasonable sums incurred for transportation expenses. The court will award the sum of \$4,800.00 for transportation.

[20] The total awarded for special damages is \$70,300.00.

### **Conclusion**

[21] The court assesses damages against the defendants as follows:

- Special Damages awarded in the sum of \$70,300.00 with interest at 6% from June 8, 2012 to May 22, 2015.
- General Damages for Pain and Suffering and Loss of Amenities in the sum of \$1,500,000.00 with interest at 6% from February 11, 2013 to May 22, 2015.
- Costs to the claimant to be agreed or taxed.