



[2014] JMSC Civ. 65

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012 HCV 03731

BETWEEN	ROY WILSON	CLAIMANT
AND	JUICY BEEF LIMITED	1 st DEFENDANT
AND	PAUL REID	2 ND DEFENDANT

Ms C. Hudson instructed by K.C.Neita & Co. for Claimant

Mr. M. Howell instructed by Knight, Junor & Samuels for
1st Defendant

Heard on 30th January , 11th April and 23rd April, 2014

***Motor vehicle accident – No issue as to liability – Defence limited to quantum –
General Damages – Nature and extent of injuries – Treatment – Impairment rating
– Prognosis – Handicap on the Labour Market***

Morrison, J.

[1] The claim at bar arose out of a motor vehicle accident on November 16, 2010 in Porus, Manchester in which the sexagenarian Claimant suffered ghastly injuries: cerebral concession, chest wall contusion, multiple abrasion and laceration to both lower limbs, blunt trauma to abdomen and bilateral fractures to both lower extremities. The Claimant underwent surgical procedure in respect of both fractures and was subsequently discharged in a state of cast-immobilization and was unable to weight

bear. He had to use a wheelchair for several months and thereafter a walker for gait strengthening. From the medical report of Dr. Kevin G.L. Jones, Consultant Orthopaedic Surgeon, dated December 10, 2011 when the cast was eventually removed the Claimant had not reached maximum medical treatment though the fractures had healed to the extent of bony union. However, there was abnormality in the knee which manifested in a restricted range of movement and stiffness thereto.

The Claimant was also fitted with knee hinge brace to both knees and underwent an intense course of physiotherapy in spite of which the response thereto was marginal. Whence, the Claimant continued his physiotherapy treatment up to May 2012 but it failed to restore him to his pre-morbid status.

[2] It is against the Claimant's impaired and unresponsive condition that he underwent yet another surgical procedure aimed at improving the range of movement in the left knee. Notwithstanding, the residual stiffness persisted so much so that Dr. Jones' report in relation thereto reflected on the active flexion and extension lag of the left knee as remaining unchanged. Again physiotherapy followed.

[3] The Claimant who was assessed by Dr. Jones thereafter had still not reached maximum medical improvement and his impairment was rated: 55% impairment to the left knee or 22% of the whole person; 35% impairment to the right knee or 14% of the whole person impairment. In total the Claimant's disability rating was given as 35% of the whole with the uninspiring prognosis of his developing arthritis to the knee.

[4] Enter the records Dr. Grantel Dundas, Consultant Orthopaedic Surgeon, who saw the Claimant on November 14, 2012. The Claimant complained to him about his mobility challenges as well of stiffness in the knee severe to intense pain in the knee, difficulties going up inclines, numbness in the toes, reduced walking tolerance and pain on getting up from a seated position. Upon his being examined Dr. Dundas' report is of "a rather emotional man who broke down several times during the history taking"; the left lower extremity was 1cm longer than the right and that he walked with a stiff antalgic gait; the thigh and calf circumference on the left were within ½ cm of the measurements on the right; there was trace effusion on the right knee; he had a 15°

flexion contracture on the left and could flex to 65°; there was an 8° flexion contracture on the right knee and it could flex to 108°; on the right knee he had an 10cm infra-patellar scar extending to the anterior aspect of the right leg; the left knee had a 17cm straight pre-patella scar starting from the quadriceps muscles and ending at the tibial tuberosity; there was pre-patella and peri-patella tenderness in the left knee and also tenderness in the tibial tuberosity of the right; there was noted pain at the end of the ranges of motion bilaterally.

[5] The diagnosis entertained were:

- a) proximal and right tibial fracture with open reduction and internal fixture
- b) fracture left patella with arthrofibrosis of the left knee.

From Dr. Dunbar's report it is revealed that Radiographs were done at Medical X-ray Institute which showed that the Claimant had a buttress plate as well as compression cancellous screws in the left tibial metaphysis and there was non-uniform sclerosis of the left patella with loss of patella-femoral cartilage gap. As to the impairments Dr. Dundas brought to bear thereon certain diagnostic parameters and the American Association Guides to the Evaluation of Permanent Impairment in computing –

- i) Patello-femoral arthrosis to the left knee with 1-2cm cartilage interval thereby giving it a 10% lower extremity impairment;
- ii) Range of motion to left knee as to contracture was evaluated at 20% lower extremity impairment for flexion it was a 20% lower extremity impairment;
- iii) Range of motion to right knee as to contracture was evaluated at 10% lower extremity impairment; as to range deficit it was given a 10% lower extremity impairment. The sum impairment was given as 25% of the whole person.

[6] In the result Dr. Dundas was of the view that the Claimant would suffer considerable challenges on his returning to work where he would be required to stand or walk in relation to his disability. The herald of his prognosis was unfavourable as it

was envisaged that the Claimant is likely to develop osteoarthritis in both knees in the foreseeable future.

Assessment Factors

[7] I agree with the Claimant's counsel that in assessing general damages the factors which should be brought to bear in that deliberation are the nature and extent of the injuries, the treatment administered, the period of incapacitation, the impairment rating and the prognosis. However, I wish to lay emphatic stress on those factors that are most appropriate as a guide in assessing general damages. In **Louis Brown v Estella Walker** (1970) 11 J.L.R. p. 561 at p. 564: it is not only the extent and nature of the injuries sustained, the nature and gravity of the resulting physical disability and the pain and suffering endured that are to be considered but also the duration and the effect upon the health of the subject pending the award of compensation

The Claimant relied on –

1. **Lindo Harris v McKenzie**, reported in Khan's compendium on Recent Personal Injury Awards (Khan's Vol. 3, p.8)
2. **Delmar Dixon (b.n.f. Olive Maxwell) v. Jamaica Telephone Co. Ltd** S.C.C.A. No. 15/91
3. **H. West & Sons v Shepperd** [1964] 2 A.C. 633
4. **United Dairy Farmers v Lloyd Goulbourne**, C.A. 65/81
5. **Fletcher v Autocar and Transporters Ltd** [1968] 1 All.E.R. 726
6. **Arthur Lee & Another v Richard Belnavis** S.C.C.A. No. 28/90
7. **Andrew Ebanks v McClymouth** (2004 HCV 2172)

[8] As for the first Defendant reliance was attached to:

- a) **Patrick Lawrence v Frank Cole**, reported in Harrison's Assessment of Damages in Personal Injury, p. 397

- b) **Anthony Miller v Uriel Larmond**, reported in Harrison's p. 365
- c) **Marvin Rutherford v Esau Dewar and Caleb Barnes**
- d) **Marcia Hemmings v Patrick Watson & T Geddes Grant (Distributors) Ltd.** reported in Khan's Vol. 3. p.11

[9] Of the presented cases **Rutherford, Miller** and **Lawrence**, supra are inapplicable as they were only references obliquely entertained by the first Defendant who has submitted that \$6,000,000.00 is an appropriate award for general damages, where in fact they speak to awards of \$3,500,000.00 at most. As to the remaining cases I prefer the **Lindo Harris** case. Here the Claimant suffered bilateral fractures to both femur. He was treated conservatively. He attained maximum medical improvement and his disability was assessed to wit:-

- a) 10-15% impairment of right extremity;
- b) 2-25% impairment of left extremity.

His loss of amenities were his inability to play cricket, football or to dance comfortably. He was awarded general damages of \$280,000.00 in March 1989 which updates to \$12,604,120.17.

[10] However, while it is true that the nature of the injuries, treatment, impairment rating and prognosis are greater in the case at bar than in the **Lindo Harris** case, yet I have to return to the observations that were made in the **Louis Brown** case, that is to say, it is the extent and nature of the injuries sustained, the nature and gravity of the resulting physical disability, and the pain and suffering endured, that are the vital factors in guiding an award of general damages.

The other referenced cases, notwithstanding, I think that an appropriate award for general damages is \$12,800,000.00. As to handicap on the labour market, and, following the **Andrew Ebanks** case, I award the sum of \$500,000.00.

[11] In the upshot judgment is awarded as follows

1. Special damages in the sum of \$1,588,753.90 with interest thereon at 3% from 16th November, 2010 to 23rd April 2014.
2. General damages in the sum of \$12,800,000.00 with interest thereon at 3% from 28th February 2012 to 23rd April 2014.
3. Costs are awarded to the Claimant and are to be agreed if not so agreed then such costs are to be taxed.