

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2007/HCV03837

BETWEEN DELROY DOBSON CLAIMANT
AND JOHN'S HALL AGGREGATES LTD DEFENDANT

Messrs Ainsworth and Andrew Campbell for Claimant

Ms. S. Pinnock for Defendant

Heard: June 29, July 2, 3 and November 12, 2009

Assessment of Damages – Injury to Foot

Lawrence-Beswick J

1. Mr. Delroy Dobson, the claimant, was an employee of John's Hall Aggregates Limited (John's Hall), the defendant, when he sustained an injury whilst on the job.

Mr. Dobson now claims damages to compensate for injuries he suffered because of the negligence of John's Hall's servant or agent.

John's Hall admits liability but contests the issue of the quantum of damages.

2. On November 15, 2006, Mr. Dobson was clearing a mixer when a co-worker turned on the machine. The 7 foot blade in it chopped his right leg. His right foot was swinging and was held to the back of his leg by what he describes as "the main string."

3. He was admitted to the Cornwall Regional Hospital where he remained for several weeks. He attended clinics to get the foot dressed but it became infected and he returned to the hospital for surgery. After three (3) weeks he was discharged without surgery as the infection had not subsided sufficiently for the surgery to be performed.

4. He continued attending clinics and hospitals but the foot was still not in a condition for surgery.

5. Eventually, on July 17, 2007, the surgery was performed. A bone from his ribs as well as a piece of iron were put into his leg. A bone which had been sticking out of his ankle was cut off. Three (3) days later he was discharged but continued to return to hospitals for treatments.

6. Mr. Dobson's evidence is that he endured great pain. Every time he took a breath after the surgery, he felt pain in his side. He could not lie on his back nor on his side.

Eventually in December 2007, he started receiving physiotherapy which continued until August 2008.

7. His right leg is now deformed and scarred with a reduced girth. An area by his ribs is also scarred. His right leg is 4cm shorter than his left and he limps. He feels pain in his ankle and a constant burning. He relies on a cane to walk. His right foot cannot fit into a shoe. He is depressed because of his inability to support his wife and three (3) children.

8. Mr. Dobson was examined by several doctors including a doctor employed by John's Hall and their findings can be summarized as follows:

- Laceration to the right leg
- Deformity of right leg with bone exposed
- Motion of ankle reduced

- Open fracture of the tibia
- Ankle pain on weight bearing
- Ankle stiffness with limited ankle joint movement
- Two (2) surgical scars on leg and scar at injury site
- Metallic implant
- Mildly impaired sensation in foot
- Atrophy of the right thigh and right leg
- Residual angulations

9. The doctors have assessed Mr. Dobson's injury as resulting in 19% impairment of his lower extremity which is equivalent to 8% impairment of the whole person.

General Damages

10. To support their submissions as to the appropriate award for the pain and suffering Mr. Dobson endured, both Counsel relied on several authorities some of which, in my view, were not comparable to the instant case.

Counsel for Mr. Dobson submitted that an award of \$6 million to \$6.5 million would be appropriate. He relied on **Douglas Fairweather v Joyce Campbell** (Khan Volume 5 at p.74) where the updated award of \$3,673,798.95 was made for injuries to the claimant which had resulted in disability of 7-10% of the left lower limb, as well as injuries to his chest, tooth, neck, spine, shoulder, whiplash and weak fist in the upper limb.

He also relied on **Sherene Rose v Satchwell** (Khan Volume 4 at p. 70) where an updated award of \$8,092,485.54 was given for a crush injury to an eight year old child which resulted in 28% of whole person disability.

I have considered all the authorities submitted in determining what I consider to be the appropriate award.

I rely in particular on **Peter Ankle v Florence Cox** (Harrison's Assessment of Damages for Personal Injuries Case Note # 2) and **Keneil Coombs v Stedford Rodney** (Khan Volume 6 at p. 63).

In **Ankle's** case, Mr. Ankle suffered an open fracture to his left ankle which resulted in a whole person disability of 8%. He had been hospitalized for two (2) months, and visited the hospital for 10-12 weeks. His updated damages award was \$1,759,436.60.

In **Coombs'** case, Mr. Coombs' bimalleolar fracture of his right ankle resulted in 6% impairment of his whole person for which damages were awarded in the updated sum of \$1,761,540.00.

In the instant case, I regard \$1,800,000.00 as being appropriate for the pain and suffering resulting from this injury as compared to the injuries described in the authorities.

11. Mr. Dobson's evidence is that he has been handicapped on the labour market because of his injuries.

Counsel for John's Hall submits that there should be no award under this head as there is no medical evidence confirming the likelihood of Mr. Dobson being handicapped in the labour market. His leg was not amputated.

In my view his handicap is obvious. The injured limb is shorter and thinner than the other and is deformed. I accept that he has pain from standing, sitting or walking for longer than 20 minutes. I agree with Counsel that the pains are subjective, but I accept that Mr. Dobson speaks truthfully when he describes his pain. My view is fortified by the

medical evidence concerning the duration and extent of his treatment and permanent disability.

Counsel's submission that Mr. Dobson only needs his hands to do his job is countered by the unchallenged evidence of Mr. Dobson that he needs to use his legs to access the mixer. In any event, even John's Hall itself did not re-employ him.

12. Counsel for Mr. Dobson submitted that at Mr. Dobson's age of 40 years, the years of purchase should be 14. He calculates that the award for loss of future earnings because of handicap should be $\$10,000.00$ (weekly wages) $\times 52 \times 14 = \$7,280,000.00$ less 30% of statutory deductions $\$2,184,000.00$ leaving net award for this as $\$5,096,000.00$.

13. Mr. Dobson is nearly illiterate. His job choices appear to be minimal if not absent. It is not likely that he will be employed for his lifetime.

In determining the award I make for handicap on the labour market, I use as the multiplicand the annual wages for 2009 of $\$341,192.54$ and 8 as the multiplier. This totals $\$2,729,540.32$.

Special Damages

14. As it concerns transportation expenses, Mr. Dobson claims special damages. I accept as accurate the figures of the taxi driver, Mr. Everton Brissett, being $\$124,000.00$ for the charge to transport Mr. Dobson to his medical appointments thirty-six (36) times.

Counsel for John's Hall, submitted that the figure should be rejected because Mr. Dobson's evidence was that he received a receipt after each trip whereas Mr. Brissett said he did not issue receipts and further, that the amount was unreasonable.

15. I accept Mr. Brissett's evidence about the arrangements with Mr. Dobson and find the sum of \$3,500.00 each for most of the trips is reasonable. Mr. and Mrs. Dobson were being transported to and from two (2) hospitals and clinics. Their home was five (5) miles from the main road in rural Jamaica. The hospital to which Mr. Dobson went most times was 25 miles from his home. Further, Mr. Brissett waited for the entire time of Mr. Dobson's treatment each day.

I also accept on a balance of probabilities that he paid \$300.00 per day to another taxi driver for four (4) trips to a nearby clinic. That amounts to \$1,200.00.

The total transportation expenses would therefore be \$125,200.00.

16. Mr. Dobson's evidence, which I accept as true, showed that his wife was indispensable to him during his illness. She attended to his most personal needs as he could do nothing for himself.

It was agreed between the parties that \$300,000.00 should be awarded for the extra help she gave and also that \$131,768.00 should be paid for medical expenses. This totals \$431,768.00.

17. I now consider the loss of earnings. Mr. Dobson's evidence is that he was paid by John's Hall after the accident up to May 2007, and then in August 2007. However, the evidence of Mr. Porter, the accountant from John's Hall, is that he was paid nothing after May 2007.

In a Further Amended Statement of Special Damages, Mr. Dobson claims:

Loss of earnings from 15.11.06 to 30.05.07 i.e. 28 weeks at \$3,029.92	- \$84,838.00
Loss of earnings from 01.06.07 to 02.02.09 i.e. 88weeks at \$10,000.00 per week	- 880,000.00
And from 03.02.09 to 03.07.09 at \$11,078.50 per week	- 272,837.00

18. As it concerns loss of earnings, the evidence of Mr. Dobson differs from that of Mr. Porter. I prefer the evidence of the accountant whose evidence was precise and clear. Mr. Dobson presented no documentary evidence.

The evidence which I accept as true is that Mr. Dobson received his wages until May 30, 2007 and thus did not lose earnings for the period between the accident and May 30, 2007.

Mr. Porter's evidence is that Mr. Dobson's wages in 2007 were \$9,929.47 fortnightly, after statutory deductions. There are 17 fortnights between May 5, 2007 and December 31, 2007. His lost earnings for this period would therefore be \$168,800.99.

Mr. Porter's evidence is that for 2008 Mr. Dobson's earnings would have been \$11,121.01 each fortnight. For the 26 fortnights in 2008, Mr. Dobson therefore lost \$298,146.26.

Mr. Porter's evidence is that in 2009 Mr. Dobson's earnings would have been \$13,122.79 per fortnight. For the 13 fortnights in July 3, 2009, Mr. Dobson would have earned \$170,596.27.

The earnings he lost from May 2007 to July 2009 therefore totalled \$628,543.52.

I therefore assess the damages as:

General Damages

For pain and suffering in the sum of \$1,800,000.00 with interest at 3% per annum from date of service of the claim form to today.

For handicap on the labour market - \$2,729,540.32

Special Damages

For loss of earnings in the sum of \$628,543.52

For travel costs in the sum of \$125,200.00

For extra help - \$300,000.00

For medical expenses - \$131,768.00

With interest on special damages at 3% per annum from November 15, 2006 to today.

Costs to the claimant to be agreed or taxed.