



[2021] JMSC CIV.146

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2018 HCV 01825

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| BETWEEN | JERMAINE FRANCIS | CLAIMANT |
| AND | BARRINGTON BARNES | DEFENDANT |

IN OPEN COURT

Christine Mae Hudson and Deandra Grant-Wright instructed by K. Churchill Neita and Company

Defendant absent and unrepresented.

May 1, 2021 and June 4, 2021

Assessment of Damages – Multiple deep lacerations - Multiple fractures to the right upper and right lower limbs – Superficial peroneal nerve injury – 23% upper extremity impairment – 8% lower extremity impairment - 31% whole person impairment.

I. REID J. (AG)

[1] Judgment having been entered for Mr. Jermaine Francis in default of defence on July 30, 2018, the matter came on for assessment of damages before this court. The claim arose out of an accident that occurred along the Osbourne Store main road, May Pen in the parish of Clarendon, on August 21, 2016, when a car owned

and driven by Mr. Barrington Barnes collided with a motorcycle that Mr. Francis had been riding. As a result, Mr. Francis suffered injuries and loss.

WITNESS STATEMENT

- [2]** Mr. Francis (born August 29, 1979) provided details as to the extent of his injuries and his treatment at the May Pen Hospital, Mandeville Hospital, National Chest Hospital and by Dr. Grantel Dundas. He spent five days at the May Pen Hospital and approximately one month at the Mandeville Hospital. He underwent surgery on his right wrist, right leg and right ankle. His wrist and leg were placed in a cast.
- [3]** He required the use of a wheelchair for some time as the injury to his right hand prevented him from using crutches. This resulted in him being mostly incapacitated in bed. He later underwent physiotherapy. Eventually, he was able to use a single crutch until January 2017.
- [4]** He received the help of a family member for six months after the accident. This was at a total cost of \$72,000.00. He also visited the May Pen Hospital on 30 occasions and the Mandeville Hospital on 10 occasions for follow-up treatment.
- [5]** Up to June 2019, he experienced pain in his right leg and ankle when standing for extended periods. He also experienced cramps in the leg when standing, sitting or walking for extended periods. There is also a 'crackling sound' when bending his knee.
- [6]** Mr. Francis was employed as a mason until the accident. As of May 2018, he is employed as a baker's assistant. He currently earns \$2000.00 fortnightly. This is a reduction from his prior earnings of \$10,000.00 per week on average.
- [7]** He can no longer play football which was something he enjoyed with his friends in the community. He also suffered the embarrassment of using a bedpan whilst at the hospital.

MEDICAL REPORTS

- [8]** Three medical reports were admitted into evidence.
- [9]** The medical report of Dr. Percival Duke of the May Pen Hospital stamped February 12, 2018, contains inaccuracies as to the date of the accident. Nonetheless, it was reported that upon examination, Mr. Francis was observed to have suffered deformity of the right forearm with large laceration, deformity, swelling and tenderness of right thigh with a large deep laceration. An x-ray was done, and it was discovered that there was fracture/dislocation of right wrist and displaced fracture of right femur. The diagnosis was multiple deep lacerations and multiple fractures to the right upper and right lower limbs. He was treated and referred to the Mandeville Regional Hospital.
- [10]** The Medical report of Dr. Amanda Chow of the Mandeville Regional Hospital dated December 1, 2017, indicates that an examination was conducted which revealed a laceration to right foot, 6 cm and 5 cm lacerations to dorsum of right hand. The diagnosis was fracture right shaft of femur, fracture dislocation of the right wrist and multiple extensor tendon injuries. He was hospitalized for 28 days, underwent surgery twice, given analgesia, pin site care and skeletal traction. He was referred to physiotherapy.
- [11]** Dr. Grantel Dundas of Orthopaedic Associates in a report dated September 12, 2018, confirmed that he saw Mr. Francis on September 3, 2018. Mr. Francis complained of intermittent cramps in the right leg, pain in the right ankle, loss of range of motion of his right wrist and inability to make a full fist with his right hand. An examination revealed the following:

The right leg:

- a high stepping gait;
- multiple scars from accident and surgery;

- circumference of right thigh and calf were less than the right;
- reduced power in right quadricep;
- reduction in movement of ankle and toes; and
- blunting sensation at ankle scar.

The right hand:

- scars on wrist;
- reduced movement in wrist and fingers; and
- ability to make 50% of normal fist.

[12] He was diagnosed with extensor tenodesis of the right wrist and hand, inferior radio-ulnar joint arthrosis right wrist, extensor tenodesis right foot and right ankle with superficial peroneal nerve injury, and a healed fracture to the shaft of the right femur.

[13] A radiograph showed healed right wrist with early radio-carpal degenerative disease, healed right femur with locked intramedullary nail in situ and no bony injury to the right ankle.

[14] His right upper extremity impairment was assessed as 38% or 23% of the whole person. His lower extremity impairment was 21% or 8% of the whole person impairment. This amounts to 31% whole person impairment.

[15] A combination of surgery and/or physical therapy was recommended to improve Mr. Francis' condition. The adherent tendons would likely require surgical intervention. The nerve deficit, however, of the right foot will not recover even with surgery.

SUBMISSIONS

[16] Counsel submitted that \$15,000,000.00 would be an appropriate figure for general damages. The sum of \$188,094.00 was requested for special damages as well as interest.

[17] Three cases were presented in support of the sums claimed for general damages:

- **Cecil Henry v The Attorney General for Jamaica and Keith Scott** (unreported), Supreme Court, Jamaica, Suit No CL 1992 H 128, judgment delivered March 21, 1996 (also cited in Khan's Recent Personal Injury Awards made in the Supreme Court of Judicature of Jamaica, Volume 4, at page 34). The sum of \$1,250,000.00 was awarded in March 1996 (CPI 14.9) which would upgrade to \$9,035,234.90 (April CPI of 107.7).
- **Dennis Brown v Pre Mix Limited** (unreported), Supreme Court, Jamaica, Suit No. CL 1999 B 118, judgment delivered March 24, 2001 (also cited in Khan's, Volume 5, at page 99). The award was \$850,000 in March 2001 (CPI 21.7) which equates to \$4,218,663.60 (CPI of 107.7).
- **Gladstone White v Dorrington Ellis and Aston Nairne** (unreported), Supreme Court Jamaica, Suit No. CL 1997 W 042, judgment delivered November 23, 1999 (also cited in Khan's, Volume 5, at page 11). The sum of \$3,000,000.00 was awarded in November 1999 (CPI 20.1) which equates to \$16,074,426.87 (CPI of 107.7).

[18] Special damages were presented as follows:

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| Medical reports and police report | \$17,094.00 |
| Cost of Orthopaedic Associates (Consultation and medical report) | \$75,000.00. |
| Transportation expenses (from home to May Pen Hospital and from home to Mandeville Hospital | \$100,000.00 |

ANALYSIS

General Damages

- [19] While there are a number of similarities between **Cecil Henry** and the case at bar, there are also important differences. The claimants in both cases, who are in similar age range, suffered injuries to both their upper and lower extremities, that is, fractures to their hand and leg. They also had lacerations, nerve damage and reduced movement in their fingers. In **Cecil Henry**, however, the claimant sustained injury to his eye and felt pain in his ribs.
- [20] They both underwent surgery to correct the fractures. Mr Henry spent 55 days in the hospital and required further surgery to remove the implants. Mr. Francis was hospitalized for 33 days and will require surgery and/or physiotherapy to improve his condition.
- [21] Mr. Henry was totally disabled for one year and seven months. Mr. Francis reported that he obtained help for six months after which time he was partially disabled and able to use a crutch until January 2017.
- [22] In terms of resulting disability, they both developed arthritic degeneration/radio-carpal generative disease, restriction in hand/wrist movement, reduction in toe movement and felt pain when standing for extended periods. Mr. Henry, however, could not move his knee freely whilst Mr. Francis hears a 'crickling sound' when he bends his knee.
- [23] There is a wide gap in terms of their whole person impairment. Henry is 14% whereas Mr. Francis is 31%.
- [24] It must be noted, however, that percentage of disability is only one factor to be considered, and the primary concern is a thorough assessment of the nature of the injuries and the pain and suffering and loss of amenities of claimants. I find that

although there are a number of similarities, there are differences that seem to indicate that the injuries had a greater effect on Mr. Francis than they did Mr. Henry.

- [25] **Dennis Brown v Pre Mix Limited** shares little similarity with the case at bar. The nature of the injuries is different. In that case, Mr. Brown suffered injuries to his hand whilst Mr. Francis suffered injuries to upper and lower extremities. The whole person disability of Mr. Brown was 19%, which was less than Mr. Francis in the case at bar.
- [26] The injuries sustained by the claimant in **Gladstone White** is more severe when compared to those suffered by Mr. Francis. The nature of their injuries differs significantly. Mr. White lost consciousness, fractured both bones in his forearm and his wrist, injured the nerve that supplies the right upper limb, fractured his thigh bone and both bones of his right leg, suffered pain to chest, neck, right hip and his fractures had difficulty healing leading to the wounds breaking down. The only similarities between the two cases were that both parties suffered fractured wrist and femur and nerve injury.
- [27] The claimant in **Gladstone White** was hospitalized for two months, two weeks, two days and a further eight to 19 days compared to Mr. Francis' 33 days. Additionally, in **Gladstone White**, the claimant was totally disabled for 18 months and at the date of assessment was still being seen by the doctor.
- [28] Their resulting disabilities also differ greatly. Mr White's arm reduced in size with soft muscles. He had a stiff right shoulder leading to his hand lying by his side and he had to use his other hand to move his right hand. He had a limp with one leg being 2 1/2" shorter requiring special shoes for both feet. His knee was stiff and could not bend. His right limb was solid, that is, could not move. Mr. Francis has suffered none of this. Mr. White's whole person impairment was 70% and the prognosis was that he would remain as he was for the rest of his life. Additionally, White's sexual relations were affected, and he could no longer play games, ride a

motorcycle or be social. Mr. White, however, shares three similarities with Mr. Francis. Both could not make a full fist, had impaired ability to walk normally and had scars with no sensation.

[29] Of the cases cited, I consider **Cecil Henry** to be closest to the case at bar. I take into consideration the fact of the greater effect that the disability has on Mr. Francis and his inability to take part in sports. I find that \$9,035,234.90 is an appropriate award for general damages.

Special Damages

[30] When it comes to special damages the claimant is always put to strict proof. The following items of special damages were proved by Mr. Francis and would therefore be awarded: medical expenses in the sum of \$88,094.00 and travelling expenses in the sum of \$100,000.00.

ORDER:

1. General damages in the sum of \$9,035.234.90 at an interest rate of 3% per annum from May 26, 2018 to June 4, 2021
2. Special damages in the sum of \$188,094.00 at an interest rate of 3% per annum from August 21, 2016 to June 4, 2021.
3. Costs to the claimant to be taxed or agreed.
4. The claimant's attorneys-at-law to prepare file and serve this order.