



[2020] JMSC Civ 264

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014HCV00055

BETWEEN	CAVEL GORDON	CLAIMANT
AND	LIQUID CHEMICAL LIMITED	1ST DEFENDANT
AND	CLAUDIS BELL	2ND DEFENDANT

OPEN COURT

Ms. Colleen Frankly instructed by Marion Rose-Green for the Claimant

Mr. Paul Gentles instructed by Cecil J. Mitchell and Co. for the 1st Defendant

2nd Defendant absent and unrepresented

HEARD: November 1, 18, 2016 and February 18, 2020

Damages – Assessment – Negligence - Motor Vehicle Accident - Claim for Personal Injury.

GRAHAM ALLEN, J

The Court apologizes to the parties for the delay in delivering this judgement.

- [1]** This is an assessment of damages hearing against the 1st Defendant. The 2nd Defendant was never served with the claim form or particulars of these proceedings. As a result, default judgment was entered against the 1st Defendant only, pursuant to Rule 16.2 of the Civil Procedure Rules, 2002 (hereafter referred to as the "CPR").

Award

[2] The Court assesses damages against the 1st Defendant as follows:

Special Damages is awarded in the sum of \$608,825.00 with interest at 3% from October 1, 2008 to November 18, 2016.

General Damages is awarded in the sum of \$3 million with interest at 3% from January 8, 2014 to November 18, 2016.

Costs to the Claimant to be taxed if not agreed.

Background

[3] The Claimant, Cavel Gordon claims damages for injuries and loss sustained by the negligence of the 1st and 2nd Defendants, the 2nd Defendant being the servant or agent of the 1st Defendant.

[4] On October 1, 2008, the Claimant was a passenger aboard a public passenger vehicle, a Hiace mini bus bearing registration numbers and letters PD7338 which was travelling along the Mandela High Way in the parish of St. Catherine.

[5] A truck bearing registration numbers and letters CV1875 driven by the 2nd Defendant, Claudius Bell and owned by the 1st Defendant, Liquid Chemicals Limited collided into the back of the vehicle which the Claimant was travelling.

Particulars of Injuries

[6] The Claimant has suffered trauma to her left hip owing to the motor vehicle accident. Her injuries are detailed in medical report by Doctor Daine Clarke, which are as follows;

- a. Left lower limb shorted,
- b. Tenderness over left hip,
- c. Fractured acetabulum
- d. Fractured acetabulum with posterior dislocation of left hip

No assessment as to disability was made.

The Hearing

- [7] In the Claimant's witness statement, which was permitted to stand as her evidence-in-chief, it gave evidence that she incurred costs although most of which was not supported with proof. However, the Claimant did exhibit a receipt from Apex X-Ray & Ultrasound Services dated October 17, 2008 for the sum of \$22,525.00. She did not provide a copy of the receipt for the Medical Report dated July 1, 2009, nevertheless I believe the claim of \$ 2,000.00 is reasonable. In addition, she needed to get crutches at a cost of \$3,000.00 given the fracture to her hip.
- [8] The Claimant claimed for transportation, I accept that taxi drivers do not provide receipts and that route taxis cost less. Given the Claimant's disposition she required transportation to and from the Spanish Town Hospital; therefore, I believe that a claim of \$ 800.00 is reasonable.
- [9] A letter from Mrs. Karen Lewis in support of her claim for loss of income was allowed into evidence. Loss of income is calculated from October 1, 2008 to June 1, 2010 at \$ 8,000.00 weekly which is equivalent \$576,000.00.
- [10] The total award for special damages is \$608,825.00.

Cases Considered

- [11] At the assessment of damages hearing Counsel for the Claimant referred to the following cases as guides to determine the quantum of damages to be awarded for general damages:

(1) **Lloyd Robinson v Denham Dodd and Audrey Wilson** Suit No C. L.

1987 R 133, Khan's Recent Personal Injury Awards made in the Supreme Court of Judicature of Jamaica, Volume 5, page 37.

(2) Mavis Peterson v Attorney General for Jamaica and Gilbert McIntosh

Suit No. C.L. 1992 P 117, Khan's Recent Personal Injury Awards made in the Supreme Court of Judicature of Jamaica, Volume 4, page 43.

- [12]** In the case of Lloyd Robinson, he was a passenger in a minibus injured in a motor vehicle accident when he was thrown from the vehicle. He suffered a comminuted fracture of the left acetabulum, posterior dislocation of the left hip, blow to head and left hand, chopped away lip, loss of dentures and cut over right eye. His disability assessed as 20% of the lower limb, which said disability could increase according to any arthritic changes which might occur. The Court concluded that the 20% impairment would be equivalent to 12% whole person with the possibility that this percentage might increase as the plaintiff got older. The Court awarded the sum of \$650,000.00 when the sum is updated using the Consumer Price Index (CPI) 235.6 for November 2016, it is equivalent to \$3,566,371.68.
- [13]** In the case of Mavis Peterson she suffered inter alia a posterior fracture dislocation of her right hip, the fracture was reduced and skeletal traction was applied to the affected limb. The case awarded the sum of \$500,000.00, when the sum is updated using the CPI, 235.6 for November 2016, it is equivalent to \$2,683,371.30.

Analysis

- [14]** The cases considered provided reasonable guides as to the award made to the Claimant in this case. Using these cases, the Court came to the view that the award would have to be between the awards in the two (2) cases considered.
- [15]** The case of Mavis Peterson is similar to the instant case in terms of facts, however, it can be distinguished on the ground that Mavis Peterson was age 37 at the time of the judgment while the Claimant was age 53 at the time of the accident.
- [16]** The sum of \$3,000,000.00 is reasonable compensation for the injuries suffered.

CONCLUSION

[17] The Court assesses damages against the 1st Defendant as follows:

(i) Special Damages - \$608,825.00 with interest at 3% from October 1, 2008 to November 18, 2016.

(ii) General Damages - \$3 million with interest at 3% from January 8, 2014 to November 18, 2016.

(iii) Costs to the Claimant to be taxed if not agreed.

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V. Graham Allen
Puisne Judge