



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. HCV 2004/0112**

<b>BETWEEN</b>	<b>HYCKSROY GORDON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>HOWARD GREEN</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>RUBY PANTON</b>	<b>2<sup>ND</sup> DEFENDANT</b>

***CORAM: JUSTICE DAVID BATTS***

***DATE: 3<sup>RD</sup> October 2012***

***Debayo Adedipe for Claimant***

***Howard Green 1<sup>st</sup> Defendant in person.***

***Assessment of Damages – Hip Replacement – 17% whole Person Permanent Partial Disability***

[1] In this claim filed on the 20<sup>th</sup> day of January, 1994 the claimant alleges negligence against the 1<sup>st</sup> Defendant who he alleges was the servant and/or agent of the 2<sup>nd</sup> defendant.

[2] A judgment in default of acknowledgement of Service was entered on the 26<sup>th</sup> October 2004 against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

[3] The Claimant has filed a notice of Assessment of Damages which was returnable on the 28<sup>th</sup> September 2012. By Affidavit dated 26<sup>th</sup> July 2012 proof of service of Notice of Assessment of damages on the 2<sup>nd</sup> Defendant was established.

[4] On the 28<sup>th</sup> September, 2012 the 1<sup>st</sup> Defendant appeared in person but the 2<sup>nd</sup> Defendant did not. The matter was on that date adjourned to the 3<sup>rd</sup> October, 2012 for hearing.

[5] On the 3<sup>rd</sup> October 2012 the 1<sup>st</sup> Defendant attended. The court enquired of him whether he had an attorney and advised him that judgment in default had been entered against him. He indicated that he did not regard the accident as his fault and he had tried unsuccessfully to get an attorney. The court encouraged him to try to get an attorney as at this stage judgment was already entered against him and damages would now be assessed.

[6] The Claimant was put in the witness box and sworn. After identification, his witness statement dated 2<sup>nd</sup> December 2009 was put in evidence as his evidence in chief. He gave evidence that he continues to have pain in his right hip when he moves in the morning and if he sits on something hard. He is now 62 years old. The Bundle of Medical reports and receipts were put in evidence as Exhibit 1, Notice of Intention to tender having been served on the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as per Affidavit of Service dated 19<sup>th</sup> February. 2010.

[7] The 1<sup>st</sup> Defendant had no questions for the witness as he had been unconscious after the accident and was unsure of claimant's injuries.

[8] The Claimant's Counsel submitted as follows:

**Special Damages**

- |     |   |                |
|-----|---|----------------|
| a). | 186 weeks lost earnings at \$12,000.00 per 6 day work week reduced by 1/3 to take account of taxes. | \$1,877,377.30 |
| b). | Receipts for treatment  | \$340,000.00   |

**General**

He relied upon the authority of Gordon v. Clarke

Khan's Volume 5 p. 52 and submitted that \$7 million was the appropriate award.

Cost of Future Surgery    \$340,000.00

- [9] I have considered the medical report of Dr. Don Gilbert Senior Resident in Orthopaedics at the University Hospital of the West Indies. He describes the injury to the complainant as a dislocated right hip. The claimant was last seen at the University Hospital on the 4<sup>th</sup> December, 2000 four months after the accident. Total Hip Replacement was deemed necessary on the 25<sup>th</sup> May, 2001. He was discharged on the 3<sup>rd</sup> May, 2001. When examined in July 2001 the hip was found to be unstable and there had been loosening of the femoral component. Revision surgery was required and examination revealed a heavy growth of pseudomonious. On the 29<sup>th</sup> August 2001 a procedure was done and he was discharged home on the 3<sup>rd</sup> September 2001. The revision hip replacement accrued on the 2<sup>nd</sup> January 2002.
- [10] In the final analysis the doctor states that the Claimant now has an obvious short gait limp as his right leg is shorter by 2.5 cm than the left. He has a total whole person disability of 17% due to limb discrepancy and the hip replacement. Hip replacement surgery will also be required 15 years after the date of the report which was 2003.
- [11] I have considered the authority cited by Counsel and agree that it is of some assistance. In that case the Claimant had to do a lot of walking as he was a salesman. His permanent disability was 15% of the limb. The award was \$710,000 in 1999 which updates according to Counsel to \$4,480,000.00.
- [12] I have also reviewed the matter of Lorna Pitter v. Clarke 2006 HCV 02454 Khan Vol. 6 page 28 decided in 2008. In that case the Claimant as a result of injuries had to undergo a below knee amputation to the left leg. Dr. Rose assessed her Permanent Partial Disability at 28% whole person in consequence of that. The

amount in May 2008 for Pain Suffering and Loss of Amenities was \$5,500,000 which I compute to amount to \$7,920,000 today.

[13] It is in the interest of justice that awards as best as possible are consistent. The Claimant in this case has both legs and can still walk comfortably. It appears to me that \$7 million would be too high and out of range of comparable awards. But his pain and suffering whilst undergoing multiple surgeries is not to be underestimated. I therefore award the following:

**General Damages**

Pain Suffering and Loss of Amenities	\$5,000,000.00
Cost of Future Surgery	340,000.00

**Special Damages**

Medical and related expenses as per receipts tendered	340,266.52
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**Loss of Income**

<b>Adjusted for tax (reduced by 1/3)</b>	<b>\$1,877,377.30</b>
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Interest at 3% will run on General Damages from the 1<sup>st</sup> March 2004 being the date the claim was served to 3<sup>rd</sup> October 2002.

Interest at 3% will run on Special damages from the 7<sup>th</sup> August 2002 being the date of the accident to 3<sup>rd</sup> October 2002.

Costs to the Claimant of \$40,000.00 in accordance with Table A.

**David Batts**  
**Puisne Judge**