



[2017] JMSC Civ.192

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2012HCV 03542

BETWEEN	LENA GRAY	CLAIMANT
AND	ORAL BECKFORD	1ST DEFENDANT
AND	EDGAR FRANKLYN	2ND DEFENDANT

CONSOLIDATED WITH:

CLAIM NO. CLAIM NO. 2012 HCV03539

BETWEEN	PHILLIPA GREY	CLAIMANT
AND	ORAL BECKFORD	1ST DEFENDANT
AND	EDGAR FRANKLYN	2ND DEFENDANT

CONSOLIDATED WITH:

CLAIM NO. 2012HCV03540

BETWEEN	GEOFFREY GRAY	CLAIMANT
AND	ORAL BECKFORD	1ST DEFENDANT
AND	EDGAR FRANKLYN	2ND DEFENDANT

CONSOLIDATED WITH:

CLAIM NO. 2012HCV03541

BETWEEN	DENSMARK GREY	CLAIMANT
AND	ORAL BECKFORD	DEFENDANT
AND	EDGAR FRANKLYN	

CONSOLIDATED WITH:

CLAIM NO. 2012HCV03543

BETWEEN	EMILY GREY (By her mother and next friend Phillipa Grey)	CLAIMANT
AND	ORAL BECKFORD	DEFENDANT
AND	EDGAR FRANKLYN	

Mr. Hopeton Henry for the claimants

Defendants absent and unrepresented

ASSESSMENT OF DAMAGES – PERSONAL INJURY – LOSS OF EARNINGS -

HEARD: May 4, 2017 and May 31, 2017

WINT-BLAIR, J (Ag.)

[1] The claimants are all members of the same family. On Monday, June 26, 2006, they had all been travelling together in a motorcar driven by Mr. Geoffrey Gray. Mr. Densmark Grey was returning from overseas and his family had all gone to

the airport in Montego Bay to collect him. They set off for home to St. Dacre district in St. Ann where they all live, in Falmouth, Trelawny a collision took place with the defendant's vehicle. This collision came about by the defendant's vehicle overtaking a truck around a bend. That vehicle hit the vehicle the claimant's were travelling in head-on. As a result, the claimants have suffered injury and sustained loss. The claimants filed this claim on June 25, 2012 seeking damages, interest and costs. Judgment in default was entered against both defendants on February 17, 2016.

- [2] In considering the awards for general damages claimed, I have had due regard to the cases submitted by counsel for each claimant. I will only set out that which I have assessed to be the most appropriate in arriving at a conventional figure based on comparable cases cited.

Phillipa Grey

- [3] In respect of the claim of Mrs. Phillipa Grey, teacher, she was 31 years old at the time of the accident. She relied on two medical reports one from Dr. Yumkella Kamara when she was seen at the Falmouth General hospital and the other from Dr. Narashima Reddy Yerreddu who saw her at the St. Ann's Bay hospital. The report of Dr. Kamara indicated that the claimant was examined by him on June 26, 2006, he admitted her with findings of pain to chest, neck and head, right ear pinna with posterior laceration, chest tender to the left lateral wall or compression fracture, abdominal nad, limbs nad. When he examined the claimant on June 30, 2006 his diagnosis was that she had suffered soft tissue injuries, with no fractures. She was discharged.
- [4] On July 17, 2006, the claimant was seen by Dr. Yerreddu who diagnosed trauma to chest with rib fractures, he found a fracture right 8th rib and a hairline fracture right 7th rib.
- [5] In her oral evidence, she claimed the following items of special damages:

1. Household help at \$7,500 per week for three weeks.
2. Transportation to St. Ann's Bay hospital \$23,000.
3. Ruined clothing and wristwatch at \$5,700
4. Medical report St. Ann's Bay hospital \$1,000
5. Registration at St. Ann's Bay hospital \$500 on September 12, 2008.
6. Medical report Falmouth hospital \$1,500.
7. Registration at Falmouth hospital \$1,000 on June 26, 2006.
8. Falmouth hospital bill \$6,600 for IV fluids, injections and a cervical collar.
9. Dr. Kamara's fee \$1,500 by receipt dated February 18, 2008.

[6] In her pleadings she claimed helper's wages at \$22,500 for 5 weeks as well as a police report. As there were no receipts to substantiate these figures. The court will disallow the claim for the police report and award the figure as pleaded for household help at \$4,500 per week totaling \$22,500. Items two to nine have been proven.

Special damages therefore total: \$62,300.

[7] In respect of general damages the claimant cited the authorities of Trevor Benjamin v Henry Ford et al 2005HCV02876 a decision of Roy Jones, J. The claimant was diagnosed with soft tissue injuries and in that case was awarded general damages for pain and suffering and loss of amenities in the sum of \$700,000 with interest at 6% in addition to special damages and costs. The instant claimant's injuries were more serious than this. She merits a higher award.

[8] In Enid Haughton v Michael Wallace and Suzan Thompson C.L. 2001 H 145 reported at Khans Volume 6 page 145, Straw, J on July 7, 2004, awarded the claimant \$800,000 with interest for pain and suffering based on a diagnosis of blunt trauma to the right shoulder and fracture of ribs of chest wall. The claimant in that case was diagnosed as likely to suffer from permanent osteoarthritis to the

shoulder and chest wall. The instant claimant suffered no resultant disability however she has a scar from the laceration behind her ear. The medical certificate from Falmouth hospital does not give a measurement for this laceration nor what treatment would be recommended to prevent scarring, in fact, the medical certificate from Falmouth hospital does not mention this laceration at all.

This case of Enid Haughton is most similar in terms of injury suffered by Phillipa Grey. The award using the CPI for March 2017 of 238.7 updates to \$2,460,824.74.

[9] I therefore make the following award to Phillipa Grey:

Special damages in the sum of \$62,300.00 with interest at 3% from June 26, 2006 to May 2, 2017.

General damages for pain and suffering and loss of amenities in the sum of \$2,460,824.74 with interest from the date of service to May 2, 2017.

Costs to the claimant to be taxed if not agreed.

Geoffrey Grey

[10] Geoffrey Grey was a 36 year old driver at the time of the accident. He relied on one medical certificate from Dr. J Prakash dated June 24, 2009. The claimant's evidence was a loss of consciousness on impact, he woke up in the Falmouth hospital. This report states that having examined the claimant on June 26, 2006 at the Falmouth hospital he found:

“minimal tender at left upper chest, no swelling. Multiple small bruise to the right leg.” [sic]

The claimant was admitted and discharged on June 30, 2009 to follow up with the surgical outpatient clinic.

[11] By way of special damages he claimed a total of \$38,250 of which \$8,250.00 have been proven for hospital fees, a police report, transportation, ruined clothing and a medical report. The claimant, Geoffrey Grey suffered no resultant

disability and was not reviewed further. He gave evidence of being out of work for three weeks but failed to provide any evidence of loss of income. He also gave no evidence of travelling expenses or, continuing medical expenses although pleaded. These items are all disallowed. There was no claim for household help.

[12] By way of general damages the closest case to the claimant's injuries were suffered by Gilbert McLeod in his claim against Keith Lemard Suit No. C.L. 1993 M 196 reported at Khan's Volume 6 page 206. The injuries are similar to those of the instant claimant however the instant claimant did not suffer the laceration to the forehead and foot as did Mr. McLeod. Mr. McLeod was hospitalized for two days, the instant claimant for four days. I adopt the award for general damages made by Edward, J on March 20, 1996 which updates to \$619,713.94.

[13] I hereby make the following award to Geoffrey Grey:

Special damages in the amount of \$8,250 with interest at 3% from June 26, 2006 to May 2, 2017.

General damages for pain, suffering and loss of amenities \$619,713.94 with interest at 3% from the date of service of to May 2, 2017.

Costs to the claimant to be taxed if not agreed.

Densmark Grey

[14] This claimant is a soldier at Up Park Camp he was 37 years old at the time of the accident. He lost consciousness after the collision. He suffered from the following injuries according to the medical report of Dr. Sydapeta Jayaprakash:

“mild tender at right lower chest, mild tender at lower back.”

[15] He was admitted to Falmouth hospital on June 26, 2006 and discharged on June 29, 2006 with follow up treatment at the surgical out-patient clinic. The claimant reported to the medical company at Up Park Camp on July 3, 2006. He was treated with pain medication and placed on sick leave for 25 days, then light

duties for seven days upon resuming. He was referred to physiotherapy and attended only three sessions. He was discharged due to his failure to keep his physiotherapy appointments.

[16] He claimed and proved special damages for hospital fees, medical report and medication. He also claimed for items of clothing a cellular phone, binoculars which he had just brought back with him from his trip. While he can properly claim for his ruined clothing and cellular phone, he has not specifically proven the loss sustained in respect of the binoculars and "other goods." Special damages as proven total \$32,035.00.

[17] This claimant's injuries seem to be on par with that of Geoffrey Grey. He failed to attend his physiotherapy sessions and did not mitigate his loss as he should. The award for general damages therefore reflects that awarded in Gilbert McLeod v Keith Lenard (supra) with the requisite update in value.

[18] I hereby make the following award to Denmark Grey:

Special damages in the amount of \$32,035.00 with interest at 3% from June 26, 2006 to May 2, 2017.

General damages for pain, suffering and loss of amenities \$619,713.94 with interest at 3% from the date of service of to May 2, 2017.

Costs to the claimant to be taxed if not agreed.

Lena Grey

[19] This claimant is a housewife who was 59 years old at the time of the accident. She received the most serious injuries of the group. She too had lost consciousness after the collision. She relied on the medical report of Dr. Prakash of the Falmouth hospital. He found that her injuries were as follows:

- 7cm laceration to the forehead
- 1cm laceration to the right leg, rotation of movement of leg normal
- Mild tenderness at right upper chest

She had no fractures. Her lacerations were sutured and she was admitted being discharged on July 1, 2006 for follow up treatment at the surgical out-patient clinic. The evidence was that she continues to have headaches.

[20] She claimed \$62,539.41 in medical expenses and for a medical report, CT brain scan and a police report. The police report was the same for all the claimants and I have disallowed it as it was not paid for by this claimant but by Geoffrey Gray. The claimant's witness statement said that she had spent the sum of \$95,824.47 to include eyeglasses, eye examinations and medication as continuing medical expenses. The eyeglasses and eye examinations total \$20,100. There was no evidence to explain the receipts from Central Optical Co. Ltd. both are disallowed. The total is therefore \$59,988.75

[21] On general damages the case of Anthony Simpson v Lloyd McMohan Suit No. C.L. 1987 S 460 reported at Khan's Volume 4 page 206 is the most similar to the claimant's injuries. In that case the claimant suffered a head injury with loss of consciousness, 8cm laceration to the lateral aspect of left parietal region of scalp, 3cm laceration to right side of face, abrasion to lateral aspect of right thigh and left knee. He was admitted for two days and then treated as an out-patient. The award made by Orr, J on June 14, 1994 updates to \$1,639,923.00.

[22] I hereby make the following award to Lena Grey:

Special damages in the amount of \$59,988.75 with interest at 3% from June 26, 2006 to May 2, 2017.

General damages for pain, suffering and loss of amenities \$1,639,923.66 with interest at 3% from the date of service of to May 2, 2017.

Costs to the claimant to be taxed if not agreed.

Emily Grey

[23] This claimant who sues by her mother Phillipa Grey as next friend was 2 years old at the time of the collision. She claimed medical expenses and police and

medical reports. The police report is disallowed for reasons stated above. The claim for special damages proven totals \$3,000.00.

[24] She relied on a medical report from Dr. Jayaprakash of the Falmouth hospital. Who found that this infant had 0.4cm and 0.3cm contusions to the left side of her face. An x-ray was done which was normal, she was treated with analgesics and sent home.

[25] There were no cases cited on the head of general damages which were even close to the injuries suffered by this claimant in age or injury. I will, at the risk of being accused of plucking figures from the air make an award of \$200,000 for pain and suffering.

[26] I hereby make the following award to Emily Grey who sues by next friend Phillipa Grey.

Special damages in the amount of \$3,000.00 with interest at 3% from June 26, 2006 to May 2, 2017.

General damages for pain, suffering and loss of amenities \$200,000 with interest at 3% from the date of service of to May 2, 2017.

Costs to the claimant to be taxed if not agreed.