



[2017] JMSC Civ. 63

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2015 HCV 02193

BETWEEN	URIEL GRAY	1st CLAIMANT
AND	KADIAN WHOLLERY	2nd CLAIMANT
AND	RHONA FORBES-BRYAN	3rd CLAIMANT
AND	TAMAR McLEAN-PARNELL	4th CLAIMANT
AND	KAYDIAN BELL-GORDON	DEFENDANT

IN OPEN COURT

Mr. Nigel Haynes instructed by Ms. Linda Wright for the 4th Claimant

Mrs. Andrea Walters-Isaacs for the Defendant

Heard: April 6 and May 5, 2017

Negligence – Road Traffic Accident – Judgment on Admission - Assessment of Damages – Whiplash Injury

McDONALD J

[1] On October 1st, 2012 at about 9:00 p.m., a collision occurred along the Spanish Town Road in the parish of St. Andrew, when, a stationary Toyota Coaster bus with registration number PP6383, owned and being driven by the 1st Claimant, was hit in the rear by a Honda Fit motor car bearing registration number 3195FF, owned and being driven by the Defendant. The Defendant admitted liability for the whole of the claim and Judgment on Admission was entered on the 30th September 2015. Damages having been settled in relation to the 1st to 3rd

Claimants, the matter now falls for assessment of damages solely in respect of the 4th Claimant Tamar McLean-Parnell, (hereinafter referred to as the "Claimant").

- [2]** The Claimant, a 35 year old assessment officer employed to the University Hospital of the West Indies, was a passenger in the aforementioned Toyota Coaster Bus at the material time, and as a result of the accident, sustained injuries, particulars of which were described in the medical report dated 12th December 2013, prepared by Dr. Jean Williams-Johnson, Consultant Emergency Medicine Physician at the University Hospital of the West Indies, where the Claimant was examined on October 2, 2012 at about 1:35 pm, a day after the accident.
- [3]** Examination of the Claimant, who had presented with complaints of soreness in her back and neck, revealed no tenderness to the neck, and she was assessed as having a whiplash injury. The Claimant was treated with an injection of Voltaren, and sent home with a prescription for Voltaren tablets, Mydocalm and Zantac. She was given four (4) days of sick leave.
- [4]** The Claimant's evidence is that after the collision she was taken to the Spanish Town by the 1st Claimant, after which she went home. Later in the night she started to feel pain in her back and neck, so the day after the accident, October 2, 2012, she went to the Emergency Department at her work place at the University Hospital, and was examined by a doctor on duty. The doctor turned her head to left and right and she felt pain as he turned her head in both directions. She was given an injection for the pain, a prescription and four days sick leave. She filled the prescription and took the pain medication until it was finished. However, thereafter she was still in pain. She was feeling pain around her neck and back. She continued to take pain medication for a while and used voltaren rub. She obtained the aforementioned medical report from Dr. Williams-Johnson for which she paid \$15,000.00. This amount was pleaded and proved (exhibit "3"). She did not pay for the hospital visit. She stated that she had not

been suffering from any ailment prior to the accident, and had no previous injury to her neck and back. It is to be noted that, by the date of her witness statement, 29th June 2016, by her own evidence, she had recovered from her injuries.

- [5] Dr. Williams-Johnson issued an additional medical report dated 27th July 2016 (Exhibit “2”), in response to questions put to her by Defence Counsel in letter dated 20th June 2016 (which letter has also been admitted to form part of exhibit “2”). Therein the doctor stated:

“There was no tenderness to the patient’s neck and there was [sic] no other findings noted on examination. A whiplash injury or syndrome is caused by a traumatic event with an abrupt flexion and extension movement to the cervical spine (neck). Symptoms can include neck pain, stiffness or tenderness only. There may be no physical signs on examination. This is Grade 1 whiplash injury. Therefore the diagnosis can be made without there being any tenderness but just history of the accident and neck pain.

There is no indication in her docket that Mrs. McLean-Parnell attended the University Hospital of the West Indies for follow-up treatment.

- [6] The question which now arises is what would be a reasonable figure to compensate the Claimant in respect of her pain and suffering and loss of amenities. Mr. Haynes has urged the Court to make an award of one million dollars (\$1,000,000.00), and has placed reliance on the following four cases in support of that head of damages:

- 1) **Wilford Williams v Nedzin Gill and Christine Forrest** [Suit No. C.L. 1999 W 169] – reported at page 148, Khan’s Recent Personal Injury Awards, Vol. 5.
- 2) **Peter Marshall v Carlton Cole and Martin Thorpe** [Claim No. 2006 HCV 1006] – reported at page 109, Khan’s Recent Personal Injury Awards, Vol. 6.
- 3) **Cornelia Tomblinson v Dennis Gordon** [Claim No. 2010 HCV 04670, delivered on July 1, 2011].

4) **Dalton Barrett v Poncianna Brown and Leroy Bartley** [Claim No. 2003 HCV 1358] - reported at page 104, Khan's Recent Personal Injury Awards, Vol. 6.

- [7] Mrs. Walters-Isaacs, on the other hand, sought to distinguish these cases from the instant case and referred the Court to two cases: **Yvonne Shoucair v Hector Hinds Levi Smith** [suit No. C.L 1988/S186], and **Paula Yee v Leroy Grant and Anor** [Suit No. C.L 1985/B441] reported at pages 84 and 204, respectively, of the Revised edition of Casenote No. 2, **Assessment of Damages for Personal Injuries**, compiled and edited by Mr. Justice Karl Harrison and Mr. Marc S. Harrison.
- [8] In the case of **Williams v Gill** (*supra*), the Claimant suffered whiplash injury to the neck as a result of a motor vehicle accident on 25th June 1997. He was seen at the Health Centre where he was put on analgesics. He was reviewed on 28th August 1997 with an X-Ray. The bony structure of the neck appeared unremarkable. He had other chronic illnesses for which he had been receiving treatment from the centre prior. On 28th November 2000, he was awarded \$350,000.00 for General Damages – today such an award would amount to \$1, 486,565.83 (using the March 2017 Consumer Price Index (CPI) of 238.7, which will be used to update all figures hereinafter). In this case, there was a two-month time span before the Claimant went back to the doctor. There is no detail as to how long the Claimant suffered pain.
- [9] In **Marshall v Cole** (*supra*) the Claimant suffered moderate whiplash, a sprain and swollen and tender left wrist and left hand, and moderate lower back pain and spasm. The Claimant was treated by Dr. Nesbeth and given two (2) weeks sick leave. X-Rays of his wrist, hand and back were not done because the Claimant could not afford them. He was given analgesics and cataflam injections and continued to attend for treatment. He was discharged on December 20, 2001 after sixteen (16) medical care weeks with no residual pain or suffering. On 17th October 2006, he was awarded \$350,000.00 for general

damages. When updated, this award amounts to \$836,872.68. The Injuries suffered by this Claimant are more extensive than those suffered by those suffered by the Claimant in the instant case. Mr. Marshall received medical care for four (4) months after the injury before being discharged, whereas Mrs. Parnell was given four (4) days sick leave. There is no evidence before the Court as to how long she suffered pain and the degree of pain. She only attended on the doctor once, she could have availed herself of the resources present right there at the workplace. In addition, there was no referral by a doctor for physiotherapy or is there any evidence that any was done.

[10] In the case of ***Tomblinson v Gordon*** (*supra*) assessed on 1st July 2011, the Claimant suffered injury to her neck and lower back as a result of a motor vehicle accident on 1st August 2010. Upon examination on 3rd August 2010, the Claimant was assessed as having whiplash injury to the neck and lower back strain, with, inter-alia, paravertebral muscle tenderness over both sides of the neck in the cervical spine, and paravertebral muscle tenderness on the left side of the lower back at the level of L1 – L5 and painful flexion up to the level of the middle 1/3rd of leg in the lumbar spine. Range of movement was normal in the cervical spine, but reduced in the lumbar spine. The patient was given analgesics and muscle relaxant and referred to physiotherapy for the lower back and neck. She was reviewed on 3rd September 2010, at which time her neck and lower back pain had subsided after physiotherapy. The Claimant was awarded \$1,000,000.00 on 1st July 2011, which updates to \$1,375,000.00. The injuries and resultant pain and suffering in that case are, however, far more serious than those suffered by the instant Claimant.

[11] In the case of ***Barrett v Brown*** (*supra*) the Claimant suffered tenderness around the right eye and face, tenderness in the lumbar spine, and tenderness in the left hand. He was treated and released. He continued to experience pain, and on the 9th December 2002, visited another doctor, who, upon examination, observed that he had pain in his lower back, left shoulder and left wrist, contusions to his lip, lower back and left shoulder. He was treated with anti-inflammatory

medication and painkillers. In August of 2003, Dr. Rose, Consultant Orthopaedic Surgeon, examined the Claimant and diagnosed him with mechanic lower back pains and mild cervical strain, and prescribed therapy and lifestyle modifications. On follow up examination in October 2003 by Dr. Rose the Claimant was pain free and his permanent partial Disability (PPD) was assessed at zero%. However, the doctor cautioned that the Claimant would quite likely experience lumbar pain upon resumption of prolonged driving. General damages were awarded to the Claimant on 3rd November 2006 in the sum of \$750,000.00, which updates to \$1,797,078.90.

[12] In my opinion, this case does not provide appropriate guidance in the computation of an award, as the injuries suffered by the Claimant in the instant case are not closely comparable to those suffered by Mr. Barrett.

[13] In the case of ***Shoucair v Smith*** (*supra*), the Claimant suffered whiplash and pain in the face, neck and lower back for a period of one week. Pain relievers were used for the pain. General Damages for pain and suffering and loss of amenities were awarded to the Claimant on the 27th September 1990 in the amount of \$10,000.00. This amount updates to \$389,396.41 today.

[14] In ***Yee v Grant*** (*supra*), the Claimant sustained injuries inclusive of bruises across the abdomen, hips and right side of the neck, a sprained ankle and a cut on the palm of the left hand. Pain lasted for two weeks and there were no after effects. General damages were awarded on 26th June 1990 for pain and suffering and loss of amenities in the amount of \$5000.00, which updates to \$206, 131.26.

[15] Mrs. Walter-Isaacs submitted that Mr. Parnell's award falls squarely within the range of award made in the two cases cited above. She further submitted that \$350,000.00 would be an appropriate award.

[16] Having examined all the cases cited, I find the cases of ***Shoucair v Smith*** (*supra*), ***Yee v Grant*** (*supra*) and ***Williams v Gill*** (*supra*) to be most comparable and thus most applicable to the case at hand. In all cases the Claimant suffered

a minor injury with pain that subsided after a short period of time, as is the case here. In **Yee v Grant** (*supra*) the Claimant's injury was not whiplash like the others, but was similarly minor with no long-term effects. I also consider that, as stated earlier, Mrs. Parnell has not provided any evidence as to any continued suffering or loss of amenities resulting from her whiplash injury, and that by the date of her witness statement, she stated she had fully recovered. There is no evidence as to the precise period in which she suffered from pain. No follow-up examination or physiotherapy was done after her initial visit to the doctor. I therefore find that an appropriate award in the case for pain and suffering and loss of amenities is five hundred and eighty thousand dollars (\$580,000.00).

ORDER:-

Damages are assessed as follows:-

Special Damages are awarded in the sum of \$15,000.00 with interest at the rate of 3% per annum from 1st October 2012 to the date of this order.

General Damages are awarded for pain and suffering in the sum of \$580,000.00 with interest at the rate of 3% per annum from 29th June 2015 to the date of this order.

Costs to the Claimant to be agreed or taxed.