



[2021] JMSC Civ. 177

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2019CV03843

BETWEEN	LYNFORD HENDRICKS	CLAIMANT
AND	MUNAIR HARRISON	1ST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

CONSOLIDATED WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2018 HCV01895

BETWEEN	DORLTON BROWN	CLAIMANT
AND	MUNAIR HARRISON	1ST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

CONSOLIDATED WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2018HCV01903

BETWEEN	JESSE PRATT	CLAIMANT
AND	THE ATTORNEY GENERAL OF JAMAICA	1ST DEFENDANT

Ms. Deandra Goss instructed by Messrs. Kinghorn & Kinghorn for the Claimant

Mr. Robert Clarke instructed by The Director of State Proceedings on behalf of the Defendants

Assessment of Damages – Motor Vehicle Accident – Whiplash injury

Heard: July 28, 2021 and November 19, 2021

Carr, J

Introduction

[1] Mr. Lynford Hendricks, Mr. Dorlton Brown and Mr. Jesse Pratt (The Claimants) were all passengers in a motor vehicle being driven by Mr. Munair Harrison (The 1st Defendant) on the 19th day of September 2017. The vehicle was a fire truck and the men were returning from a response call and heading in the direction of Ocho Rios, St. Ann. The vehicle overturned in the vicinity of Fern Gully and the Claimants were injured. They have filed this claim seeking damages. A defence as to quantum was filed in relation to all the claims on the 2nd of June 2020 and as such the matter was before the court for assessment. On the date of assessment, the Claimants were not cross examined. The court is therefore being asked to determine an appropriate award in all the circumstances.

The Law

[2] I am guided by the principle stated in **Louis Brown v Estella Walker (1970) 11 JLR 561** and the factors that are to be taken into consideration in assessing general damages. These factors are:

- (i) the extent and nature of the injuries sustained;
- (ii) the nature and gravity of the resulting physical disability;
- (iii) the pain and suffering endured; and
- (iv) the duration and effect upon the person's health
- (v) the pain and suffering (including discomfort and inconvenience) which the claimant is likely to suffer after the accident.
- (vi) The Court, in determining the award to be made, must seek to compensate the Claimant for the injuries suffered once and for all.

[3] An assessment of damages must take into consideration past, present and future loss and must compensate the Claimant in such a way as if the tort had not been committed. The guiding principle is that a court must not seek to rely on precedents but must instead look to former authorities as a guide as to the current range of damages.

Submissions on behalf of Counsel

For the Claimants

Lynford Hendricks

[4] The injuries sustained by Mr. Hendricks were outlined by counsel as follows:

- a) Whiplash injury
- b) Lumbar strain, neck pain and tenderness
- c) Cramps in hand
- d) Lower back pain which radiated to the back of his thighs
- e) Abrasion to forehead
- f) Chronic lumbar strain
- g) Chronic cervical strain

[5] Counsel relied on the authorities of **Kimani Davis-Reid v. Eugene Nolan**¹ and **Talisha Bryan v. Anthony Simpson and Andre Fletcher**² where an award of \$1,400,000 was made for general damages in both cases. When updated it would be approximately \$1,800,000.00 today.

[6] Counsel submitted that due to the extent of Mr. Hendricks injuries, and the long term effects which would result in continued physiotherapy, that an award of \$2,100,000 would be appropriate in the circumstances. She drew the courts' attention to the medical report of Dr. Melton Douglas who assessed Mr. Hendricks

¹ [2018] JMSC Civ. 163

² [2014] JMSC Civ. 31

as having a 2% impairment of the whole person. Special Damages was agreed on behalf of Mr. Hendricks in the sum of \$105,000.

Dorlton Brown

[7] Mr. Brown was diagnosed with multiple injuries as a result of the accident, in particular he was found to have;

- a) Back strain
- b) Muscle contusion
- c) Whiplash injury
- d) Restricted neck movement
- e) Laceration to upper lip
- f) Musculoskeletal injury to neck and left shoulder

[8] By way of a medical report it was indicated to the court that Mr. Brown was impeded in his ability to work effectively as a result of pain. He was also unable to carry out his usual domestic chores and activities. He continues to suffer pain and he was assessed as having an 8% whole person disability.

[9] A similar sum of \$2,000,000 is being sought on behalf of Mr. Brown and Counsel relied on similar authorities. Special Damages for Mr. Brown was agreed at \$48,500.

Jesse Pratt

[10] Mr. Pratt's injuries were outlined as follows:

- a) Blunt trauma to his face and left arm
- b) Abrasion to his nose
- c) Whiplash injury with multiple contusions and abrasions
- d) Severe restricted neck movement, severe painful distress
- e) Concussion, head injury, headaches
- f) Injury to his right knee, left wrist, arm and shoulder

- g) Lumbar spine strain
- h) Neck stiffness
- i) Disc bulging in lumbar spine and
- j) Bilateral nerve root impingement.

[11] Counsel submitted that the authority of **Cecelia Buchanan v. Seacoast Trucking Service Ltd. & Brian Thompson**³ was on par with the present case. The Claimant in that case was awarded the sum of \$2,000,000 for general damages. When updated that figure computes to \$4,000,000. Counsel submitted that the sum of \$4,000,000 was appropriate in the circumstances. The medical report of Dr. Henry dated June 15, 2021, it was submitted, indicates that some three years after the accident Mr. Pratt is still suffering as a result of his injuries. He has recurring headaches, stiffness in the neck and back and social and professional limitations as a result of pain and disability. Special Damages was agreed on behalf of Mr. Pratt in the sum of \$28,000.

For the Defendants

[12] In response to the submissions on behalf of the Claimants, Counsel for the Defendants sought to distinguish the cases presented.

Lynford Hendricks

[13] Counsel referred to the cases of **Uriel Gray, Kadian Whollery, Rhona Forbes-Bryan and Tamar McLean-Parnell v. Kaydian Bell Gordon**⁴ and **Kimani Davis-Reid v. Eugene Nolan**⁵. It was argued that Mr. Hendricks suffered a mild whiplash injury and as such an award in damages should be limited to a sum of \$1,200,000.

³ Unrep. Claim No. 2008 HCV000638 Delivered May 2009

⁴ [2017] JMSC Civ. 63

⁵ [2018] JMSC Civ. 163

Dorlton Brown

[14] The sum of \$1,400,000 was submitted as being reasonable compensation for Mr. Brown in light of his injuries which were also consistent with those in the case of Kimani Davis.

Jesse Pratt

[15] It was submitted that in the case of Mr. Pratt an award of \$1,600,000 was appropriate. Counsel relied on the case of **Claudius Hamilton v. Kevin Marshall and Geovaughnie Holness**.⁶

Analysis and Discussion

[16] The starting point in all matters for assessment is to determine the main injuries of the Claimant. As there are three Claimants in this case they will be dealt with separately.

Lynford Hendricks

[17] Mr. Hendricks reported at the St. Ann's Bay Hospital on the 21st of September 2017. The findings were described as neck tenderness throughout and reduced neck range of motion. The diagnosis was a whiplash injury. The recommended treatment was physiotherapy and analgesia and he was advised to follow up with the Orthopaedic Clinic. He attended the Apex medical centre on the 22nd of September 2017 and was seen by Dr. Karen Rajpat. On examination she found healing abrasions to both sides of his forehead. She also indicated in her report that he was suffering from mild limitation of flexion of his neck and extension of his wrist. She assessed him as having a mild whiplash injury, lumbar strain and forehead abrasions. He returned on the 27th of September, an MRI showed a disc bulge and so she referred him to an ortopaedic surgeon. He was seen by Dr.

⁶ [2014] JMSC Civ. 81

Melton Douglas who prepared a report for the court dated the 21st of March 2020. Mr. Hendricks was diagnosed by Dr. Douglas as having chronic lumbar strain and chronic cervical strain.

- [18] The injuries he suffered escalated his symptoms of spondylotic changes in the cervical and lumbar spine. These symptoms predated the accident however the injuries sustained exacerbated them. He required an extended period of rehabilitation and physiotherapy as a result. The pain settled after a period of thirty months and he is no longer symptomatic. His functions have improved but there is always a risk of flare ups, which would require further physiotherapy and analgesics. He was assessed as having a 2% impairment of the whole person.
- [19] All the cases presented suggest a range for whiplash injuries between \$1,500,000 and \$3,500,000 using today's consumer price index.
- [20] Although Mr. Hendricks injuries were mild, he has suffered for almost two years as a result of the pain associated with his injury. Additionally, his prior symptoms have been compounded by this accident. In the circumstances I cannot agree with Counsel for the Defendants that this is a case in which the lower end of the range of awards is appropriate. An award of \$2,000,000 is made in the circumstances.

Dorlton Brown

- [21] Mr. Brown was seen on the 19th of September 2017 at the St. Ann's Bay Hospital. He was diagnosed as having a laceration to upper lip and musculoskeletal injury to neck and left shoulder. He was treated with analgesics and sent for x-rays. It is interesting to note that Mr. Brown did not attend upon another Doctor until the 27th of September 2017 and then again on October 2017. He was diagnosed by Dr. Phillip Henry (who prepared a report for the court) as having sustained a whiplash injury and a back strain and contusions. It was stated that he may be left with a permanent whole body disability of what he believed to be 5%. A further report was provided by Dr. Henry on the 1st of June 2021, in this report he makes reference to the fact that Mr. Brown was sent to physiotherapy and that some four

years later he was still suffering from back pains. This is so despite the fact that the Doctor in an earlier paragraph of his report indicated he last saw Mr. Brown on the 7th of October 2017. It is my view that this latest report cannot be relied upon by the court in assessing the injuries of Mr. Brown.

- [22] The whiplash injury is the dominant injury in this case and is not as serious as that of Mr. Hendricks. An award in the sum of \$1,500,000 is appropriate in the circumstances.

Jesse Pratt

- [23] Mr. Pratt was seen at the St. Ann's Bay Hospital on the 19th of September 2017. The diagnoses was blunt trauma to the face and left forearm. He had abrasions to his nose and left forearm, and his left forearm was also swollen. He was treated with medication and there was no need for follow up. Mr. Pratt went to see Dr. Henry on the 22nd of September that said year. It is noted that the injuries he described to the Doctor are inconsistent with the medical report from the St. Ann's Bay Hospital. In fact, I have disregarded the history that was given by Mr. Pratt in that report as it is also inconsistent with the evidence he gave in his witness statement. He was diagnosed by Dr. Henry as having whiplash injury with multiple abrasions and contusions. In addition, he was found to have had significant injury to his left knee, left wrist arm and shoulder, as well as lumbar spine, contusion and serious spinal injury with disc bulging and resultant impingement. His whole person disability was assessed at 5%.

- [24] It is quite interesting that in his witness statement Mr. Pratt indicated that he arrived at the hospital feeling severe neck and back pains and that he was walking with a limp. None of which is reported in the medical from St. Ann's Bay Hospital. The report of Dr. Henry does not correlate to the medical from the hospital. Dr. Henry speaks to significant injury to left knee when no such injury was observed on the day of the accident. It also speaks to serious spinal injury when according to Mr. Pratt he was sent for x-rays and upon receiving the results was sent home. The

report of the Doctor as to the severity of the injuries of Mr. Pratt is viewed with scepticism by this court, and is essentially rejected. It is accepted that whiplash injuries can develop days or even weeks after the initial impact and as such given the nature of the accident I am minded to accept that a diagnosis of such an injury a few days after the accident is not unusual. It is for this reason that I have accepted the evidence of such an injury. As this is the dominant injury that will be the focus of any award.

[25] Mr. Pratt's injuries are in keeping with those of Mr. Brown and apart from the abrasions and cuts are not any more severe. In the circumstances a similar award of \$1,500,000 is made.

Orders:

Lynford Hendricks

General Damages are assessed at \$2,000,000 with interest at 3% from the 30th of September 2019 to the 19th of November 2021.

Special Damages in the sum of \$105,000 with interest at 3% from the 19th of September 2017 to the 19th of November 2021.

Costs to the Claimant to be agreed or taxed.

Dorlton Brown

General Damages are assessed at \$1,500,000 with interest at 3% from the 16th of May 2018 to the 19th of November 2021.

Special Damages in the sum of \$48,500 with interest at 3% from the 19th of September 2017 to the 19th of November 2021.

Costs to the Claimant to be agreed or taxed.

Jesse Pratt

General Damages are assessed at \$1,500,000 with interest at 3% from the 16th of May 2018 to the 19th of November 2021.

Special Damages in the sum of \$28,000 with interest at 3% from the 19th of September 2017 to the 19th of November 2021.

Costs to the Claimant to be agreed or taxed.