



[2015] JMSC Civ. 154

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

**IN THE CIVIL DIVISION**

**CLAIM NO. HCV 2011/ 05126**

**BETWEEN**

**RYAN HENRY**

**CLAIMANT**

**AND**

**KINGSTON CONTAINER TERMINAL  
SERVICES LIMITED**

**DEFENDANT**

**Mr. Nigel Jones and Mr. Jason Jones instructed by Nigel Jones and Co. for the Claimant**

**Mr. Brian Moodie instructed by Samuda & Johnson for the Defendant**

Damages – chronic lumbar strain soft tissue injury rated at 3% whole person impairment

**Heard: May 7, 8 & June 5, 30, & July 27, 2015**

**Shelly-Williams J. (Ag.)**

**BACKGROUND**

**[1]** On March 10, 2007 the Claimant suffered injuries whilst at work on the Defendant's premises.

**[2]** Claim Form and Particulars of Claim were filed on August 18, 2011 by the Claimant and the Defendant filed and served an Acknowledgment of Service and Defence limited to quantum.

[3] The Claimant filed a Request for Judgment on Admission and Judgment on Admission on September 28, 2012. The court entered the said Judgment on Admission dated March 3, 2013. The Claimant is seeking General Damages, Special Damages and cost.

[4] The Claimant visited a number of doctors as a result of the accident. At the time of the hearing of this matter five doctors were called to be cross examined. These were the doctors called to give evidence. From the notice to adduce hearsay evidence it was shown that there were a number of other doctors, who although visited by the Claimant, were not called to give evidence in this matter. Only the evidence of the doctors called, will be utilized in assessing damages in this matter.

[5] The doctors and their diagnoses will be detailed to show when the Claimant visited them and the injuries recorded by each doctor.

### **General Damages**

[6] The reports of most doctors found varying degrees of the same symptoms and found that the Claimant had whole person impairment ranging from 3% to 25%.

### **Evidence of Doctor Bruce**

[7] The report of Doctor Carl Bruce was produced 4 years after the accident and it is dated June 14, 2011. Doctor Bruce found that the Claimant:

- After the accident, immediately developed lower back pains;
- Developed neck pains;
- His symptoms progressed and the pains fluctuated;
- He was unable to do chores and was sent to the company doctor after some 8 – 9 months;

- He was sent back to work, this however resulted in severe weakness in the body, soreness in the calves with tenderness, numbness in the hands, legs and feet;
- He had cramps, numbness and weakness in the hands and he has a burning feeling in the gluteal region;
- He gets cracking sounds in the neck;
- The neck pain is 10/10 on the visual analogue scale and 8/10 in the lower back;
- He has lost his mobility and has to be careful;
- The neck pains extend from the lower cervical spine to the shoulder and down the lower back;
- He has pains in the middle of the head which are shooting and he has pains behind the eyes;
- He reports memory lapses and difficulty reading. He has dizziness and black outs;
- He cannot do activities of daily living because of the cramps and numbness in the hands. He has electric shocks all over the body including the gluteal region, legs and calves;
- He reports sharp pains in and around the knees and burning in the feet;
- He appeared to have a generalized decrease bulk in the limbs and his power was 1V/V throughout;
- He had a decreased range of motion in the lumbar spine in flexion and extension and decrease flexion, extension and lateral bending in the cervical spine;
- He was assessed as having a severe Grade 111 spinal whiplash injury;
- The cervical MRI showed multiple disc degenerative disease at C4/5, C5/6, C6/7 with an old fracture of the dens;
- Using the American Medical Association Guides (AMA) to the evaluation of permanent impairment. He has a cervical category 111 diagnosis related estimate (DRE) which is equivalent to 15% impairment of the whole person and a lumbar category 111 radiculopathy which is equivalent to a 10% impairment of the whole person;

- This is equivalent to a total of 24% impairment of the whole person. He will need rehabilitation into some type of other non-physical job but will need medication and physiotherapy intermittently.

### **Evidence of Doctor Ballin**

**[8]** The whole person impairment of Doctor Ballin was the highest for the Claimant. Doctor Ballin is a pain specialist and he submitted his first report in this matter on July 31, 2010. The report of Dr. Neville Ballin dated July 31, 2010 was followed by an addendum dated March 12, 2015. The first report of Doctor Ballin is dated three years after the accident. The Doctor assessed the Claimant as having:-

- Chronic lower back pain;
- Initially his pain was intermittent but escalated and he now has pain constantly;
- He had constant “aching” “numbing” feeling in his lower back with no radiation of pain;
- He stated that his activities for daily living were reduced. He was however able to cook and bath himself with some difficulty and perform minimal household duties;
- He had decreased sexual activities due to his pain;
- Spasm in the erector spinae muscles, pain score ranged from 3/10-7/10;
- Mr. Henry continues to complain of generalized body pain and “weakness”. He is unable to function effectively at home. Unable to perform his activities of daily living without continued pain;
- My opinion at this time is that Mr. Henry is not fit to perform his job as a stevedore;
- He will require continuing physiological and medical support in order to help him over his pain experience;

### **Addendum:**

- His pain was initially intermittent but has escalated and is now present constantly in his neck, upper and lower back. It is associated with tingling, weakness, numbness and loss of general function;

- He states that the severity of his pain fluctuates, worse in the morning (10/10), radiating to his lower back associated with some muscle stiffness in his back. Exposure to a cold environment causes increase in his pain level;
- He is constantly fatigued and finds it difficult to sleep. He is unable to perform his activities of daily living without significant pain and has to employ someone to help in the home;
- Mr. Henry held his neck and upper body in a fixed position, due to excessive movements causing pain. Movement of his upper and lower limb was limited by pain. Significant tender points were found in both his mid back anteriorly and posteriorly. There was increased sensitivity to light touch in the anterior and posterior chest associated with trigger points;
- At this time Mr. Henry is not fit to perform his job as a Stevedore. He will require retraining in order to find a job that will accommodate his condition. It is my opinion that he will not be able to perform any work requiring heavy physical activity;
- He will require the assistance of a caregiver to help in his daily duties;
- Mr. Henry did have an initial injury consequent to his accident in 2007. He is assessed as having suffered a grade 4 spinal whiplash injury which is evidenced by neck complaints and fracture/dislocation;
- The cervical MRI findings of 22/03/2011 which demonstrated an old undisplaced fracture of the dens and disc bulges at C4/5, C5/6 and C6/7, indicates that there was significant injury to the area at the time of the accident. Also in view of his age it is most likely that the cervical spine disc bulges at multiple levels are caused by the trauma;
- Mr. Henry has chronic wide spread pain (fibromyalgia syndrome) which significantly affects his overall ability to function;
- The default disability rating of the cervical spine is 19%;
- The default disability of the lumbar spine is 7%; and
- His combined disability rating is 25% whole person disability.

### **Evidence of Doctor Abbot**

**[9]** Doctor Edgar Abbot is a consultant Orthopaedic surgeon and first saw the Claimant 2010 around three years after the Claimant sustained his injuries.

Doctor Abbot examined the Claimant twice in 2010 and three times in 2011. At the time Doctor Abbot submitted his first report on the March 27, 2012 he had the benefit of the report of Doctor Bruce who had evaluated the Claimant.

**[10]** The reports of Dr. Abbott dated March 12, 2012 and June 16, 2014 stated that:-

- Mr. Henry throughout the course of his problem has repeatedly complained of acute which evolved into chronic lower back pain;
- Mr. Henry has always complained of lower back pain which interferes with his activities of daily living to include: sitting, standing, walking, climbing stairs and also in his ability to do self help activities such as meeting his hygienic needs and preparation of his meals;
- He had reported inability to perform sexual relations as before due to his lower back pains;
- 3% whole person;
- I would further state that Mr. Henry is unlikely to be able to return to his previous occupation as a Stevedore;
- He complains of pain in his hands and his neck along with lower back pain and burning in the calves and on the feet. He describes the discomfort as being pins and needles;
- The symptoms in his neck also involve his chest, neck and throat. He describes severe headache at times and has numbing of his fingers;
- He describes what he calls a certain degree of bladder instability;
- There is a complaint about having fatigue and difficulty with concentration and also some amount of dizziness;
- In the upper-limbs and cervical spine there is some limitation of rotation in the cervical spine.

### **Evidence of Doctor Cheeks**

**[11]** Doctor Cheeks who is a Neurosurgeon of over 20 years gave a detailed report which was admitted into evidence indicating his evaluation of the Complainant. Doctor Cheeks diagnosed the Complainant with 'chronic lumbar

muscular strain sustained in the accident, as well as cervical spondylosis unrelated to accident.'

In his assessment he stated that:

*"In the incident of March 10, 2007 this gentleman sustained a medically documented acute lumbar strain which has become chronic. This chronic lumbar strain is a Class 1 soft tissue injury and is rated at a PPD of 3% whole person by utilization of the lumbar Spine Regional Grid of the 6<sup>th</sup> Edition of the AMA Guides of the evaluation of Permanent Impairment. Thus, the PPD resulting to this individual from this accident is 3% of the whole person."*

In relation to the cervical spine injury Doctor Cheeks stated that:

*"With respect to his neck, I note that during the first four years after the incident this subject who were seen by several medical practitioners, including myself in June 10, 2010 was complaining of back pains and no mention of neck pain was ever made until four years after the accident when he was seen in April 2011 by Dr. Bruce."*

In his prognosis Doctor Cheeks stated that:

*"In the future he will be liable to experience episodes of lumbar pains when he engages in physical activities involving excessive bending, lifting, pulling and pushing. Treatment of these exacerbations will consist of over-the-counter medications or physiotherapy. Surgery is not required. From a functional perspective I note that he takes care of all his own activities of daily living without the need for help or supervision and is self employed as a clothing vendor. Overall, I think that his ability to continue functioning at his pre-accident level has been mildly affected."*

**[12]** Counsel for the Claimants submitted that the court should accept the evidence of Doctor Bruce and Doctor Ballin as they were the doctors that were aware of all the symptoms of the Claimant. Counsel for the Claimant then urged the court to reject the evidence of Doctor Cheeks as

he had not paid specific attention to the Claimant's neck and was preoccupied with his back.

**[13]** Counsel for the Defendant submitted that the evidence of Doctor Cheeks should be accepted as he is the doctor who was in possession of all the medical reports before he submitted his opinion. His submission is the Doctor Cheeks had paid particular attention to the injuries to the neck of the Claimant as well as the cervical pains the Claimant had professed to be having.

### **Analysis**

**[14]** Doctor Bruce first examined the Claimant in 2011 some four years after the accident. When he prepared his report he admitted he had not been aware that the Claimant had been examined by other doctors. In cross examination he gave evidence that he did not have reports from Dr. Cheeks, Dr. Abbot, or Dr. Richards the clinical psychologist. He later changed his evidence and stated that he had in fact been provided with the report of Doctor Richards but he admitted that he had not read it in its entirety.

**[15]** Doctor Bruce admitted that it would have been important in coming to his assessment to have had other reports as it would have shown the chronological treatment of the Claimant. These reports would have assisted him in his own assessment as it would have informed him in coming to his own conclusion of the different specialist reports.

**[16]** Under cross examination it was suggested to the Doctor that the Claimant had not complained about a cervical spine injury prior to his visit to him. The Doctor's evidence is that he was not aware that when Mr. Henry saw him in 2011 it was the first time he was complaining of pain to his cervical spine.



**[17]** Despite the fact that the doctor was not in possession of the reports of the other doctors, Doctor Bruce maintained that in relation to his assessment of the Claimant as to having 24% whole person impairment.

**[18]** I reject the evidence of Doctor Bruce because of the weakness inherent in the method in which he assessed the Claimant i.e. without the report of the other doctors (or if he was in possession of the report he did not review it). I also took into consideration that he was asked if his assessment would be different if the cervical spinal injury was not from the accident and he insisted that his assessment would remain the same. The cervical spinal injury was one of the reasons he used for his assessment and it appears illogical that that injury would not affect the whole person impairment assessment. For these reasons I find his evidence on the whole person impairment to be unreliable.

**[19]** In reviewing the evidence of Doctor Ballin I note that in cross examination he admitted that he did not have the reports of other specialists except that of Doctor Bruce when he was creating his reports. It is unclear as to how Doctor Ballin calculated his whole person disability of 25%. Doctor Ballin who is a pain specialist did not have the benefit of Doctor Cheeks or Doctor Abbot's reports. He merely, it would appear, relied on the report of Doctor Bruce to arrive at his finding.

**[20]** I note that Doctor Ballin accepted that there was an injury to the cervical spine as one of his finding. He was asked under cross examination if in fact this was not a result of the accident of the Claimant in 2007 if it would affect his finding and he indicated it would not. Based on this I reject the findings of Doctor Ballin as being unreliable as to his level of whole person disability.

**[21]** In assessing the evidence of Doctor Abbot I first took note that in his report dated March 27, 2012 he stated that:

*“Mr Henry had an assessment by Doctor Bruce, which involved a cervical Injury, in my time of management from 2007 Mr Henry did not complain of any pain in the Cervical Region, as such I have not and will not make any assessment with regards to those disability claims.”*

Doctor Abbot further stated in that said report that:

*“With regards to the disability due to the Cervical Spine as reported on by Dr Bruce, I would default to his assessment, as Mr Henry only brought this to my attention after he consulted with him (in excess of some three years after the initial injury).”*

**[22]** Doctor Abbot seemed to doubt the complaints of the Claimant in that he indicated that Clinical complaints from Mr. Henry were of back pain that interfere with daily living to include sitting, standing, walking and climbing stairs and to do self help. In his clinical assessment he could discern no inability to do these daily activities. He however gave the Claimant the benefit of the doubt and still awarded him an impairment of 3% whole body.

**[23]** The theme detected by Doctor Abbot about the Claimant not being truthful about his symptoms was repeated in the report of Doctor Cheeks.

**[24]** In assessing the evidence of Doctor Cheeks special attention was paid to the approach of Doctor Cheeks to the Claimant’s injuries. The Doctor gave evidence that the Claimant did not have an injury to his neck documented on the day of the accident nor did he complain to him about it. He asked the Claimant about his neck and examined the Complainant’s neck. In addition he also examined the MRI images of his neck and after the examination his view is that there no evidence of injury to his neck. He did make a finding in relation to his neck which is that the Claimant had ostotondoideum, which is an age related degenerative change which

is an abnormality. It is not trauma related and therefore cannot be included in the assessment.

**[25]** Doctor Cheeks was of the view that the Claimant was being deceptive as he observed the Claimant walking and periodically he would display a limp. The limp though was not consistent and seemed to appear when the Claimant was of the view that he was being observed.

**[26]** In respect to his lower back pain, Dr. Cheeks noted that the spasm in his back is a soft tissue injury and using the AMA guides, it indicated a maximum impairment of 3%.

**[27]** I agree with the submissions of counsel for the Defendant that Dr. Cheeks is the only Doctor who had the benefit of all of the Claimant's previous medical reports and investigations before he provided his report. Dr. Cheeks experience and qualifications were set out for the court and it is submitted that this shows that he is the most qualified and experienced Doctor who examined the Claimant.

**[28]** Having reviewed the evidence in its entirety I accept that the evidence of Doctor Cheeks in relation to the whole person disability of the Claimant. His findings are supported by Doctor Abbot and they are the two doctors who first treated the Claimant. I accept the method which Doctor Cheeks utilized in coming to his findings in that he allowed the Claimant to indicate his injuries to him. I find that the neck injury to the Claimant is as described by Doctor Cheeks and not related to the accident March 10, 2007. I accept that Doctor Cheeks had the benefit of all previous medical reports and was therefore appropriately equipped when making his assessment of the Claimant. I therefore find that the Claimant has (3%) whole person impairment.

## QUANTUM

[29] Counsel for the Claimant submitted a number of cases in relation to three percent whole person impairment. These include;

- **Marcia Leslie v Danesh Chandra Panoë et al**, Suit No. C.L. 1996 L 113 decided on July 17, 1997. In this case the Claimant suffered severe backache and severe injury to the spine. There was no permanent disability rating ascribed to the Claimant. The updated award in that case is \$2,030,000.00.
- **Kimesha Thomas v Sylvester Sydney Rose t/a Classic Food Wholesale**, Claim No. 2012 HCV 02716 decided on January 24, 2014. In this case the Claimant suffered severe swelling and tenderness to lower back and lower back strain. She was not left with any permanent injuries. The updated award in this case is \$1,300,000.00.
- **Gary Reid v Kern Paul Anthony Abraham** Claim No. 2011 HCV 04669 decided on December 10, 2012. In this case Gary Reid suffered traumatic lumbago (lower back pain) and a whiplash. His most serious injury however was the lumbago. He recovered satisfactorily and was able to return to work after 21 days without any permanent disability. The updated award in this case is \$2,200,000.00.

[30] The submission by the Claimant's counsel was that these cases do not reflect any permanent whole person disability as experienced by the Claimant so the sum awarded for General Damages should be higher i.e. \$4,000,000.00.

[31] The Defendant's counsel in response submitted that the following cases are useful in assessing an award for Pain and Suffering for the Claimant herein:-

1. **Anthony Gordon v Chris Meikle and Esrick Nathan reported at Khan 5, page 142.**

The 27 year old Claimant was found 3 yrs after his motor vehicle accident to be suffering from cervical strain, contusion to the left knee and lumbosacral strain. He had tenderness on palpation of his entire lumbar spine and was assessed as having 5%PPD. The award of \$200,000 in July

1998, when adjusted for inflation to April 2015, now equates to \$1,144,983.00.

2. **Raquel Bailey v Peter Shaw- SCCA No 46/2010**

Ms. Bailey suffered muscle spasm in her back, pain on forward flexion, right lateral flexion and rotation. She was expected to suffer long term pain which would restrict her ability to tolerate strenuous work or physically demanding tasks. She was assessed as having a disability of 5% PPD. The award by the Court of Appeal in January 2014 of \$1,000,000.00 updates to \$1,053,352 as of April 2015.

3. **Sasha-Gaye Downer (bnf Myrna Buchanan) v Anthony Williams & Anor reported at Khan 6,page 124.**

Ms. Downer was 12 years old when, as a result of an accident, she was thrown from a bus onto a roadway. 10 months after the crash, she was diagnosed as having suffered cervical strain, mechanical lower back pain and strained abductor muscles of the left thigh. She was assessed as having 5% PPD due to precipitation of lower back pains after standing for short periods, performing physical education and bending. The award of \$1,005,150.00 in July 2007, updates to \$2,111,572.00 as of April 2015.

Counsel for the Defendant submitted that having regard to the foregoing, it is submitted that an appropriate award for Pain and Suffering in respect of Mr. Henry is between \$800,000- \$1,600,000.00.

[32] In assessing the sums to be paid I took into consideration that the injuries of the Claimant are more in keeping with the injuries suffered by the Claimant in the case **Sasha Gaye Downing**. However in that case the injuries were more severe than the ones suffered by the Claimant and as such I would reduce the amount awarded in that case by around 10%. I would then award the sum of \$1.9 million for pain and suffering.

### **Post Traumatic Stress Disorder.**

[33] The Claimant called Doctor Karen Richards who gave evidence that:

*“Mr Henry is experiencing some psychological difficulties arising from the traumatic industrial/work place incident which occurred on March 10, 2007. The results of this psychological assessment indicate that he reports clear signs of chronic Post Traumatic Stress Disorder, complicated by depression and anxiety. Mr Henry describes impairments in all aspects of functioning, whether it be domestic occupational or social.”*

[34] However, the report of Doctor Richards went on to indicate that the Claimant failed a test of malingering. A malingering test is administered to test if a person is faking their symptoms. Based on the fact that he failed this test then the Doctor warned that ‘some caution should be applied when interpreting his results.’

[35] Counsel for the Claimant submitted that in addition to the physical pain sustained by the Claimant herein, he also suffered serious psychiatric impairments. They relied on the case **Celma Pinnock v The Attorney General for Jamaica** at page 289 Recent Personal Injury Awards by Ursula Khan (Volume 5) in support of the claim for the psychiatric impairment. The Claimant it was argued had similar symptoms as Celma Pinnock namely (severe anxiety, severe depression, loss of libido).

[36] Counsel for the Claimant submitted that although the cause of the psychiatric impairment in the Celma Pinnock case was different than in this case, the court should have regard for the diagnoses in both the Celma Pinnock and the instant case. The Celma Pinnock case updates to \$11,511.000.00.

[37] Counsel for the Defendant submitted that the court should be guided by the following cases when assessing an award under this head:-

1. **Angeleta Brown v Petroleum Company of Jamaica Limited and Juici Beef Limited Claim No 2004 HCV 1061 (April 27, 2007) Khan Vol. 6, 174.**

In this case, the Claimant was injured when a liquid petroleum gas cylinder exploded causing her severe burns all over her body. Her cosmetic disfigurement was 100% for her legs and she had permanent unsightly scars. She became depressed and was seen by Dr. Wendel Abel who concluded that she was suffering from major depression, moderate and post traumatic stress disorder (PTSD). The degree of disfigurement to her nostrils and upper and lower limbs had affected her body image and was a source of emotional distress. For PTSD she was awarded \$340,000 which updates to \$736,447 using the April 2015 CPI.

2. **Sharon Greenwood-Henry v The Attorney General For Jamaica Claim No. C.L. 1999 G 116 (October 26, 2005) Khan Vol. 6, 208.**

In this case, Claimant who was scheduled to depart from the Norman Manley International Airport for London was pulled from the line at 10:05 p.m., subjected to invasive searches and taken to the Kingston Public Hospital where she was X-Rayed and "laxitised". She was not released until midday the following day. No drugs were found. Medical reports of Dr. Irons indicated that the Claimant showed evidence of insomnia, appetite disturbance, phobic avoidance behaviour specific to the incident, depression, anxiety and psychophysical bowel and bladder disturbances – meeting the criteria of post traumatic stress disorder. She was awarded \$500,000.00 for PTSD which updates to \$1,182,926.00 as at April 2015.

**3. Akeem Morgan (bnf) Kerry Ann Harrison v Owen Porter- CLAIM NO. 2009 HCV 04301**

The Claimant has relied on the case of **Celma Pinncok v AG** to ground his claim for an award for PTSD. The Defendant submits that this case is of no assistance to the court given the particular circumstances of that case and the manner of the Claimant's injury. The Court is asked to note the injuries and circumstances cited in the judgment as well as the finding by the Court that there was no evidence in that case of the Claimant malingering. These aspects, we submit, make the case wholly inappropriate as a reference in this case.

[38] Counsel for the Defendant submitted that an award of \$350,000.00-\$500,000.00 is appropriate in the case of Mr. Henry, having regard to the findings of the clinical psychologist of his suffering Somatoform Pain Disorder and malingering.

[39] In analysing the evidence of Doctor Richards the court finds that the post traumatic stress disorder of the Claimant that is described by Doctor Richards does not appear to be as severe as that suffered by the Claimant in the case of **Celma Pinnock v Attorney General of Jamaica**. The court would instead be guided by the case of **Sharon Greenaway v The Attorney General for Jamaica** Claim No. C.L. 1999 G 116 (October 26, 2005) Khan Vol. 6, 208. The post traumatic stress disorder is more in keeping with the symptoms of the Claimant and will award the sum of \$1,182,926.00 under this heading.

**Handicap on the Labour Market**

[40] At the time of the accident the Claimant was a stevedore. The evidence from the Claimant is that since the accident he has not been employed in any other profession. There is some indication from Doctor Cheeks that the Claimant had indicated that he was employed as a clothes vendor. The Claimant was never asked about this so I will not



take what was indicated by Doctor Cheeks into consideration. The evidence of most of the doctors is that the Claimant cannot or is unlikely to return to his former employment of a stevedore. The evidence of Doctor Ballin is that the Claimant would need to be retrained.

[41] The submission of counsel for the Claimant is that the Claimant is unable to work and as such the court should award a sum under this head using the multiplier/multiplicand method. The Claimant's income prior to the accident was net \$744,283.20 and the multiplier suggested was 18. The sum submitted that should be awarded is \$13,397,097.60 i.e. being (\$744,283.20 x 18).

[42] Counsel for the Claimant submitted that the multiplier of 18 is appropriate following the case of **Angie Moore v Mervis Rahman** case at page 4 of Khan Volume 4. In that case Angie Moore was 53 years old at the time and a multiplier of 11 was used for loss of future earnings.

[43] Counsel for the Defendant on the other hand argued that no sum should be awarded under this head. This submission is based on the medical evidence, and the insufficiency of the evidence of the Claimant. In the alternative that a lump sum award should be made in the sum of \$500,000.00-\$1,000,000.00.

[44] The court accepts the medical evidence that the Claimant is unable to return to his former work as a stevedore and that he was unemployed for a period of time. There is no evidence that the Claimant is unable to work. The court accepts the evidence of Doctor Abbot and Doctor Ballin's that the Claimant should be retrained, however, there is no evidence as to what if any field the Claimant would wish to be retrained in and the sum he would earn from it. There is no evidence if he is retrained if he would more or less than the money he previously earned as a stevedore.

[45] In light of the lack of evidence presented to the court in relation to the Claimant there is insufficient evidence to utilise the multiplier approach under this head. The court would instead award a lump sum payment to the Claimant in the amount of \$2 million.

### **Future Medical Cost**

[46] The evidence under this head came from two Doctors namely Doctor Richards and Doctor Ballin.

[47] Dr. Karen Richards (Clinical Psychologist) gave evidence and recommended that the Claimant should visit a Clinical Psychologist for 26-32 sessions and gave the cost relating to the visits. The visits would in total amount o \$192,500.00.

[48] The evidence as it relates to future medical cost is gleaned mostly from Doctor Ballin. The Doctor gave evidence of the following:-

- a. Intrathecal Blocks (cervical and lumbar facet) once or twice per year, a cost of \$114,000 inclusive of hospital and physician cost.
- b. One office visit every four weeks at \$600 per visit.
- c. Physiotherapy estimated 6 sessions at \$3,000 per session.
- d. Psychiatry office visits estimated at \$7,000 per session once per month.
- e. Psychology at \$8,000 per session.
- f. Monthly cost for medications at \$12,000.
- g. Domestic care at \$4000 per week.
- h. Occupational therapy at \$7,000 per session.

[49] There appears to be only two items on the list provided by Doctor Ballin that he could speak to i.e. office visits and monthly cost of medication. There is no evidence as to amount of sessions required in any of the doctor's visits whether it pertains to Doctor Ballin or any other medical expert. There is no report or estimate from a psychiatrist or a psychologist, as to the amount of

sessions that would be required. There is no evidence given in court about the cost for physiotherapy from an expert. There is no estimate as to the length of time whether it is in years or months when any of these medical costs would be required.

**[50]** There was some evidence given by Doctor Ballin about visits to his office every 4 weeks. There is however no evidence as to the time period over which these visits would be required. There is evidence from Doctor Ballin, Doctor Abbot and Doctor Cheeks that the Claimant would require medication in the future. There is however no evidence over what period of time it would be required. There is no evidence as to the type of medication he would be required to take. There is just a blanket statement about medication cost \$12,000 per month. The court holds the same view in relation to cost for domestic care. No evidence was led from the Claimant in relation to any cost relating to domestic care and the only time any such cost is mentioned is by Doctor Ballin. There was no evidence led by anyone as to the length of time that this would be required. The court took into consideration the evidence of Doctor Abbot concerning the Claimant's ability to undertake these domestic tasks and as such the court will not award any sum for domestic care.

**[51]** The Claimant has submitted that using a multiplier of 25 that the sum of the future medical expenses combined that should be awarded is JA\$18,390,500.00 and US\$2,535.00 for future medical cost.

**[52]** Counsel for the Defendant submitted that the only sum that should be awarded is the \$192,500.00 as recommended by Doctor Richards.

**[53]** I would agree with counsel for the Defendant for the reasons detailed above as there is no evidence to support any of the items listed of future medical cost detailed by Doctor Ballin. The sum of \$192,500.00 is awarded as future medical costs.

### **Special Damages**

The medical expenses incurred by the Claimant were agreed at JA\$200,000.00.

**[54]** The evidence from Mr. Henry which the court accepts is that he has not worked since July 2010 and has lost income of \$62,023.60 per month for 58 months i.e. from (July 2010 – May 2015). The Defendant did not contest the issue of loss of income of the Claimant during this period and I will award the sum claimed of \$3,597,368.80 for loss of income. The total sum claimed for special damages is \$3,797,368.80.

### **Cost**

The Claimant is awarded costs in the amount of JA\$300,000.00.

### **ORDER**

1. General Damages is awarded in the sum of \$5,082,926.00 at 3% percent per annum from August 18, 2011, to July 27, 2015. This is broken down into;-
  - a. The sum of \$1.9 million is awarded for pain and suffering.
  - b. The sum of \$1,182,926.00 is awarded for post traumatic stress disorder.
  - c. A lump sum payment to the Claimant in the amount of \$2 million for handicap on the labour market.
2. The sum of \$192,500.00 is awarded for future medical cost.
3. Special Damages in the sum of \$3,797,368.80 at 3% per annum from March 10, 2007 to July 27, 2015.
4. Cost in the sum of \$300,000.00.