



ORAL JUDGMENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA [2023] JMSC Civ 41

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV03283

BETWEEN	DEVONTIE JACKSON	CLAIMANT
AND	SHIRLEY STEPHEN	1ST DEFENDANT
AND	NORMAN RHODEN	2ND DEFENDANT

IN OPEN COURT

Ms. Judaska Shaw instructed by K Churchill Neita & Co for the Claimant

Defendants absent and unrepresented

Heard: July 27th, 2023 and September 26th, 2023

**DAMAGES - ASSESSMENT OF DAMAGES — Personal Injury — Motor vehicle collision — Negligence — Damages — Pain and suffering and loss of amenities –
– Special damages**

T. HUTCHINSON SHELLY, J

BACKGROUND

[1] The matter concerns an assessment of damages against the Defendants arising out of a motor vehicle collision which occurred on the 18th day of May 2018. The facts in brief are that the Claimant was a pillion travelling along Bustamante

Highway in the parish of Clarendon on motor cycle registered **288SL**, while the 2nd Defendant was travelling in the opposite direction along the same roadway in motor vehicle bearing registration number **PB 0980**. The 2nd Defendant, upon reaching the intersection of Bustamante Highway and Savannah Cross, suddenly and without warning, made a right turn across the path of the motor cycle resulting in a collision.

- [2] The 1st Defendant, Shirley Stephen, was at all material times the owner of the motor vehicle registered **PB 0980** driven by the 2nd Defendant who is the servant and/or agent and the authorized driver of the 1st Defendant.
- [3] On July 13, 2021, Mr. Devontie Jackson filed a Claim and Particulars of Claim alleging that he sustained personal injuries, suffered loss, damage and expenses on account of the Defendant's negligent operation of the motor vehicle. He is now seeking to recover special and general damages for these losses. The Defendant failed to file his Acknowledgment of Service, and as such Judgment in Default of Acknowledgment of Service was entered against him on the 22nd of March 2022 and noted in **Judgment Binder 778 Folio 149**. The matter is now before the Court for assessment of damages. On July 27, 2023, the Claimant gave evidence as to the quantum of damages that he believes the Court should award.
- [4] On the day of this hearing, the Defendants made no appearance and remained unrepresented, as such the matter proceeded uncontested.
- [5] It is to be noted that a Notice of Proceedings was served on Advantage General Insurance Company Limited, with whom the 1st Defendant had a policy of insurance at the material time. However, Advantage General Insurance Company Limited has not intervened in the matter on behalf of the 1st Defendant.
- [6] In the Particulars of Negligence, the Claimant listed the following:
 - a. Drove at an excessive speed;
 - b. Drove in a reckless and dangerous manner;

- c. Failed to give any or any sufficient or timely warning or signal of intention to turn across the path of motor cycle registered **288SL**;
- d. Failed to see the motor cycle registered **288SL** in sufficient time so as to avoid a collision;
- e. Failed to keep a proper or any look out;
- f. Failed to stop, to slow down or swerve or in any other way so as to manage or control motor vehicle registered **PB 0980** so as to avoid a collision; and
- g. Failed to maintain proper control or any control of motor vehicle registered **PB 0980**.

ISSUE

- [7] The sole issue before the Court is the quantum of damages which should be awarded to the Claimant for injuries suffered and other related losses as a result of the Defendants' negligence.
- [8] In making an award, the Court is required to consider the nature and extent of the injury and/or loss suffered and thereafter determine the appropriate award taking into account the sums awarded in comparable cases.

THE CLAIMANT'S EVIDENCE

- [9] At the hearing on July 27th, 2023, the Claimant was sworn and his witness statement dated the 9th of February, 2023 was allowed to stand as his evidence in chief. Mr. Jackson described his ordeal beginning at paragraphs 2 through to 3. It is his evidence that on May 18, 2018, he was riding on the back of his co-worker's motorcycle registered **288SL** along Bustamante Highway heading towards the direction of May Pen in the parish of Clarendon. He stated upon reaching the intersection of Bustamante Highway and Savannah, a car travelling in the opposite direction, suddenly turn right across the road and collided in the bike. He flew over the car and fell to the ground as result of the impact. The Claimant's evidence is

that immediately following the collision, he began to feel pain in his left ankle, left foot and his mouth which was bleeding heavily.

- [10] He was transported to the May Pen Hospital where he was examined and treated for his pain with injections, medications, pain killers and antibiotics. An x-ray was performed on his left foot which did not show any fracture. He was given a prescription by the doctor and sent home from the hospital. He stated that whilst at home, he experienced excruciating pain and swelling in his ankle for approximately two (2) weeks.
- [11] The Claimant stated that even after purchasing the medication that the doctor had prescribed to ease the pain, he noticed that once he applied a little weight on the foot, it would swell up and hurt him. Mr. Jackson explained further that he continues to experience discomfort, pain, tenderness and swelling in his foot. He also has to avoid exerting pressure on his foot as this causes swelling. He observed that there is a cramping sensation in his left ankle whenever he sits for long periods. Whilst giving his viva voce account, Mr. Jackson explained to the Court that if he walks for a mile, his foot “**swells up**” and to ease the tension and swelling, he has to resort to wearing the shoe for his left foot that is injured “**slack**”, whilst he can tighten the shoe for his right foot.
- [12] Mr. Jackson also indicated that he was working at M&M Jamaica Limited at the time of the accident as a labourer fixing pipes and mixing concrete. He noted that this job required him to be working on his feet. He expressed that because of his injuries, he was unable to function properly at work. He further stated that if you are absent from work at M&M Jamaica Limited for two (2) weeks, you are *‘considered unfit and then lose your job.’*
- [13] He recounted that at the time of accident, he was also engaged in raising/rearing goats. He stated that he owned 12 heads of goats and he would often take them to the bush to feed. He stated further that after the accident this posed a challenge for him as he was unable to attend to his goats since this would involve him

standing and walking for long periods. He also said that he still experiences problems with his left foot as it constantly “*swells up*” if he sits and walks for an extended period. He indicated that presently he can only work four (4) times a week as a Security Guard at JAMALCO because of the constant swelling of his foot if he stands on it for a long time.

- [14] He also complained about the discomfort he felt as his tongue was badly injured after the accident. Upon being discharged from the hospital, he was advised to soak his mouth three (3) times a day for approximately four (4) weeks with a mixture of vinegar and salt water to assist with the healing process of his tongue. He explained that his tongue took an inordinately long time to heal and the cut caused him immense discomfort especially when eating and drinking. He was unable to chew properly and had to drink with a straw. He also stated that he is unable to eat hard foods and was restricted only to soft foods. He outlined further that he had to eat and chew slowly and drink on one side of his mouth to avoid further pain to the tongue. He also could not speak properly and brush his teeth as this would cause him to experience excruciating pain in his mouth. He stated that the cut on his tongue healed after 4-5 weeks. He also said that the area where he received the cut on his tongue is presently still sensitive.

SPECIAL DAMAGES

- [15] It is an established principle that special damages, which are generally capable of exact calculation, must be specially pleaded and proved and therefore in any action in which a claimant seeks to recover special damages, he has a duty to prove his loss strictly. (See for e.g. **Lawford Murphy v Luther Mills** (1974) 14 JLR 119). The authorities however show that the court has some discretion in relaxing the rule in the interest of fairness and justice, depending on the particular circumstances of the case. (See for e.g. **Julius Roy v Audrey Jolly** [2012] JMCA Civ. 63).

Medical Reports

[16] The following items of Special Damages were pleaded and proved by way of receipts:

1. **Medical Report of Dr. Da Roux T. Barrett dated 11th December 2018;**
2. **Receipt from Dr. Da Roux T. Barrett dated 11th December 2018 in the sum of \$15,000.00.**

[17] The Claimant pleaded the sum of **\$15,000.00** for medical expenses in respect of the Medical Report prepared by Dr. Da Roux T. Barrett for which he received a receipt which was provided to the Court in respect of this claim and admitted into evidence. Also, Counsel did not pursue the item of Special Damages for medication purchased at Goldline Pharmacy valued at **\$865.20**. Having reviewed this exhibit, I was satisfied that there was cogent evidence in support of same and that Mr. Jackson should be compensated for this expense.

[18] In relation to loss of earnings, Mr. Jackson has asked for an award in the sum of **\$133,920.00**, given his inability to work for six (6) weeks after this incident. His evidence is that due to his injuries, he lost income he would have earned from being a labourer at M & M Jamaica Limited which on average was **Forty-Four Thousand Six Hundred and Forty Dollars (\$44,640.00)** per fortnight. Although Mr. Jackson provided no documentary evidence of his earnings, I note that they fall within the range of the established minimum wage. I also noticed that the period and sum lost had been stated in his particulars of account and neither this assertion or what was in his statement had been refuted by the Defendant. As such, I am satisfied that there is cogent evidence in support of this sum and thus I make an award for **\$133,920.00**.

[19] In relation to transportation, Counsel indicated to the Court that she would not be pursuing this item of Special Damages.

[20] Accordingly, the sum to be awarded to the Claimant for special damages is **\$148,920.00.**

GENERAL DAMAGES

Medical evidence

[21] The particulars of the Claimant's injuries were outlined in the Medical Report from the May Pen Hospital prepared by Dr. Da Roux T. Barrett dated December 11th 2018 which indicates that Mr. Jackson presented with pain to his left ankle, left foot and tongue. Upon examination and investigation, he was found to have no abnormalities with respect to his respiratory system, cardiovascular system and his central nervous system. In terms of his muscular skeletal system, Dr. Barrett observed that he had tenderness to the left ankle, a 4cm x 5cm hematoma and tenderness to his medial left foot. As it relates to his oral cavity, he has superficial laceration to his tongue.

[22] In relation to the radiological examination of his left ankle and left foot, the Doctor did not observe any abnormalities. On the issue of assessment, he had soft tissue injuries to his left ankle and left foot. In relation to treatment, Dr. Barrett noted that the Claimant was prescribed analgesics and antibiotics. He was given pain-killers and wound infection prophylaxis to alleviate the pain. Dr. Barrett advised him to soak his oral cavity in salt water on a daily basis to assist in healing of the laceration present on his tongue laceration. In respect of prognosis, Dr. Barrett indicated that full clinical recovery is expected within 3 to 6 weeks.

SUBMISSIONS

[23] It is settled law that "the sum of money that should be awarded as General Damages for personal injury suffered by a Claimant ought to be a sum which as **"nearly as possible"** puts the Claimant in the same position he/she would have been in if she had not sustained the wrong." (per Lord Blackburn in **Livingstone v Rawyards Coal Co.** (1880) 5 A.C. 25 at 39.

[24] The general principle for assessment of an award under this head is that this is to be done in accordance with previous decisions of similar type of injuries. In addition, I adopt the guidelines for this procedure which were laid down in the case of **Cornilliac v St. Louis** (1965) 7 WIR 491 and where the court takes into account:

- a) The nature and extent of the injuries sustained
- b) The nature and gravity of the resulting physical disability
- c) The pain and suffering which had to be endured
- d) The loss of amenities suffered
- e) The extent to which, consequentially, the plaintiff's pecuniary prospects have been materially affected.

[25] Counsel for the Claimant relied on the following cases as guides to quantifying a reasonable award within the range of **\$1.8 m - \$2m** for general damages in relation to Mr. Jackson:

- i. **Kenneth Morgan v Lilly Horie and Leroy Horie [1992]** Suit No. C.L. 1984/M391 cited in Harrison at page 399. The Claimant sustained 2" laceration of the tongue. An award of **\$40,000.00** was made for general damages on June 1992 at a CPI of 6.2%. This updates to **\$824,516.12** using a CPI of 127.8 for February 2023.
- ii. **Sherine Williams v The Attorney General of Jamaica [2016]** JMSC Civ. 12. The Claimant sustained abrasion to her right elbow and right leg, swelling and tenderness to the right leg as well as hematoma to the right posterior lateral aspect of the leg. She was treated conservatively and discharged on the same day. An award of **\$700,000.00** was made for general damages on January 15, 2016 at a CPI of 88.6% and which when updated revalues to **\$1,009,706.55** using the CPI of 127.8 of February 2023.

[26] She submitted that the injuries sustained by the Claimant in the **Sherine Williams** is more extensive, especially given that the treatment involved plaster of paris

backslab for two (2) weeks. She contended that despite this, the Claimant in the case at bar, continues to be plagued by the intermittent pain and swelling to the left ankle.

- [27] Counsel submitted further than if the **Sherine Williams** case is utilized as a base guide and in consideration of the traumatic insult or injury to the tongue, this should justify a '*significantly higher award to the Claimant at bar.*'

DISCUSSION/ANALYSIS

- [28] Having considered the similarities and distinguishing features of the cases provided for comparison, I find that the injuries to the Claimant are less severe than those sustained by **Sherine Williams** but appears to be more on par with that of **Kenneth Morgan**. The Claimant in **Sherine Williams** was assessed as having a 3% whole person impairment, whilst this Claimant did not have the benefit of any consultation sessions with an Orthopaedic Specialist and no medical evidence is available for him in this regard. In **Kenneth Morgan**, whilst the Claimant was not assessed as having any whole person impairment, he sustained laceration to his tongue. This is similar to the Claimant in the instant case who also suffered laceration to his tongue. I have carefully considered the submission of the Claimant and whilst I agree that there are similarities between the Claimant in the instant case and **Sherine Williams**, I find that the injuries suffered by **Sherine Williams** was far more severe as she was assigned a whole person impairment.

- [29] I have also given due consideration to the medical evidence presented and I accept that the Claimant was treated by Dr. Da Roux T. Barrett at the May Pen Hospital, was x-rayed and the x-ray did not show any fracture and that he was treated with analgesics and antibiotics. There is no indication that he required any further treatment after being treated and discharged from the hospital. Also, there is no provision of any evidence to show that he received any further medical treatment at another health facility.

[30] The impairment rating assigned to **Sherine Williams** would seem to place him in a different band of award from Mr. Jackson. I have considered the fact that Mr. Jackson was not reviewed by a specialist who was able to assign an impairment rating. Having examined the authorities, considered the submissions by Counsel and the evidence before the Court, I am of the view that the case of **Sherine Williams** should be used as the preferred guide and augment it to account for the fact that this Claimant had laceration on his tongue. I find that his situation is remarkably less severe than that of **Sherine Williams** and the appropriate award would be in the sum of **Two Million Dollars (\$2,000,000.00)**.

ORDER

[31] Damages are assessed as follows:

1. Special Damages are awarded in the sum of **One Hundred and FortyEight Thousand Nine Hundred and Twenty Dollars (\$148,920.00)** with interest at the rate of 3% from May 8th, 2018 to October 2nd, 2023.
2. General Damages are awarded for pain and suffering in the sum of **Two Million Dollars (\$2,000,000.00)** with interest at the rate of 3% from July 13th, 2021 to October 2nd, 2023.
3. Costs to the Claimant to be agreed or taxed.
4. Claimant's Attorney to prepare, file and serve the Judgment herein.